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IN THE

Supreme Court of the United States

October Term, 1975.

No. 75- .

LOCAL 542, INTERNATIONAL UNION OF OPERATING ENGINEERS,

Petitioner,

v.

THE HONORABLE A. LEON HIGGINBOTHAM, JR., Judge of the United States District Court for the Eastern District of Pennsylvania,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1975.

No. 75- .

LOCAL 542, INTERNATIONAL UNION OF OPERATING ENGINEERS,

Petitioner,

v.

THE HONORABLE A. LEON HIGGINBOTHAM, JR., JUDGE OF THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT.

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Petitioner, Local 542, International Union of Operating Engineers, respectfully prays that a Writ of Certiorari issue to review the order of the United States Court of

Appeals for the Third Circuit, entered in the above-entitled matter on December 30, 1974, denying its Petition for Writ of Mandamus and/or Prohibition which would direct respondent to proceed no further in the matter of *Commonwealth of Pennsylvania and Raymond Williams, et al. v. Local 542, IUOE, et al.*, Civil Action 71-2698, and which would direct the assignment of another judge to hear said case, pursuant to the Judicial Code, c. 139, § 65, 28 U. S. C. 144.

OPINIONS OF THE COURTS BELOW.

The United States Court of Appeals for the Third Circuit did not grant any hearing and filed no opinion in support of its order of December 30, 1974, which denied the Petition for Writ of Mandamus and/or Prohibition (No. 74-2281). Said order is printed, *infra* (Appendix D, p. A145).

The United States Court of Appeals for the Third Circuit thereafter entered an order denying Petition for Rehearing on January 15, 1975; no hearing was granted and no reason was given for the denial. Said order is printed, *infra* (Appendix E, p. A146).

On February 25, 1975, the Court of Appeals for the Third Circuit entered a further order denying the Motion for Stay Proceedings pending petition for certiorari to this Court. In this order, the Court of Appeals stated that its reason for its decision was "want of jurisdiction." Said order is printed, *infra* (Appendix G, p. A149).

The opinion of the United States District Court for the Eastern District of Pennsylvania, filed December 4, 1974, denying petitioner's Motion for Disqualification, under 28 U. S. C. A. 144, in *Commonwealth of Pennsylvania and Raymond Williams, et al. v. Local 542, IUOE, et al.*,

Civil Action No. 71-2698, is unreported. Said opinion is printed, *infra* (Appendix B, p. A2).

The order of the United States District Court for the Eastern District of Pennsylvania, denying the Motion for Disqualification filed December 4, 1974, is unreported; it is printed, *infra* (Appendix C, p. A144).

JURISDICTION.

The Judgment of the Court of Appeals was entered on December 30, 1974 (Appendix D, *infra*, p. A145). The order of said Court denying rehearing was entered on January 15, 1975 (Appendix E, *infra*, p. A146). The jurisdiction of this Court is invoked under 28 U. S. C. A. 1254(1), and the All Writs Statute, 28 U. S. C. A. 1651.

QUESTIONS PRESENTED.

1. Did not the Court of Appeals err in refusing to review the decision of the District Judge, on the ground that it had no jurisdiction?

2. Did the statement by the District Judge show a reasonable basis for petitioner's belief that the District Judge was biased and not impartial as to require him to withdraw from the case under 28 U. S. C. A. 144?

STATUTES INVOLVED.

The statutory provisions involved are the Act of June 25, 1948, c. 646, as amended, 28 U. S. C. A. 1651, known as the All Writs Statute; and Section 65 of the Judicial Code, as amended May 24, 1949, c. 139, 28 U. S. C. A. 144. Said provisions are printed, *infra* (Appendix A, p. A1).

STATEMENT OF THE CASE.

This action was brought by 12 black plaintiffs, later expanded into a class action, under Title VII of the Civil Rights Act of 1964 and other civil rights statutes against petitioner union, alleging racial discrimination in employment. A jury trial was denied.

On November 15, 1974, petitioner moved to disqualify the trial judge, respondent herein, under 28 U. S. C. A. 144, with an accompanying affidavit, as required by the statute. It was there stated that the trial judge, in the course of a speech made to a society said:

> "Today I do not see the [Supreme] Court of the 1970's or envision the court of the 1980's as the major instrument for significant change and improvement in the quality of race relations in America. . . .
>
> • • •
>
> ". . . As I see it, *we* must make major efforts in other forums without exclusive reliance on the federal legal process. . . ."[1]

Said quote was printed in a newspaper of general circulation which made the general public aware of the trial judge's leading role as an advocate and moving party in the advancement of civil rights cases, demonstrating his

1. In his speech, a copy of which was attached to the Court's opinion, Judge Higginbotham made an even significant statement showing his role as an advocate in the promotion of civil rights under the Act. Following the above quote, his speech continues as follows (A74):

> ". . . While certainly we will support the concept of integration wherever feasible and oppose all mechanisms of governmental actions to preclude blacks from having a fair option in our society, the *strategy* today *must go beyond the label or the attainment of integration*. . . ." (Emphasis supplied.)

great emotional involvement which inevitably affects the impartiality of the judicial mind.

The trial judge denied the motion for disqualification on December 4, 1974. Petitioner thereupon filed a petition for writ of mandamus and/or prohibition in the Court of Appeals for the Third Circuit, but that court denied the petition without holding any hearing and without giving any reasons, on December 30, 1974. A Petition for Rehearing before the Court of Appeals in Banc was likewise denied without a hearing and without any reasons, on January 15, 1975. Thereafter, petitioner moved the Court of Appeals to stay the proceedings in the district court, but the Court of Appeals denied this motion on February 25, 1975, and, on this occasion, stated that its decision was based on the ground that it had no jurisdiction in the matter.

REASONS RELIED ON FOR ALLOWANCE OF THE WRIT.

I. The Refusal to Review the Case Below Under the All Writs Statute Was in Direct Conflict With the Decisions of the Courts of Appeals for the First, Second, Fifth, Eighth and Ninth Circuits.

The refusal of the Third Circuit below to exercise jurisdiction under the All Writs Statute was based on its decision in *Green v. Murphy*, 259 F. 2d 391 (1958). There, in a 4-3 decision, it was held that the writ would not lie in a case involving a motion to disqualify a judge; that decision on such a motion was not a final judgment as to permit a review by the Court of Appeals. This decision is in square conflict with the decisions of the majority of the other circuits—First Circuit: *In re Union Leader Corp.*, 292 F. 2d 381 (1961); Second Circuit: *Wolfson v. Palmieri*, 396 F. 2d 121 (1968); *Rosen v. Sugarman*, 357 F. 2d 794 (1966); *Foster v. Medina*, 170 F. 2d 632, cert. den., 335 U. S. 909 (1948); *In re Lisman*, 89 F. 2d 898 (1937); Fifth Circuit: *Henry v. Speer*, 201 F. 869 (1913); Eighth Circuit: *Minnesota & Ontario Paper Co. v. Molyneaux*, 70 F. 2d 545 (1934); *Cuddy v. Otis*, 33 F. 2d 577 (1929); Ninth Circuit: *Gladstein v. McLaughlin*, 230 F. 2d 762 (1955); *Connelly v. United States District Court*, 191 F. 2d 692 (1951).

The All Writs Statute empowers all Federal courts to "issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law." The majority of the Circuits hold thereunder that petitions for mandamus and/or prohibition, requesting orders for disqualification based on bias and prejudice, are properly entertained in connection with pending litigation in district courts, even though it has not attained the status of final disposition and/or appealability.

The refusal of the Court below to exercise jurisdiction under the All Writs Statute and grant a hearing constitutes

a denial of due process. *England v. Louisiana State Board, etc.*, 375 U. S. 411, 415, 11 L. Ed. 2d 440, 445 (1964); *Goldberg v. Kelly*, 397 U. S. 254, 25 L. Ed. 2d 287 (1970).[2] The majority of the Circuits recognize this essential aspect of due process. In view of this clear conflict between the decision below and those of the majority of the Circuits, this Court should grant certiorari to review the judgment below and resolve this serious issue.

The disqualification statute permits a party to have a judge disqualified for a valid reason set forth in an affidavit. In this case, the pre-trial conference has disclosed that there will be in excess of 800 witnesses for all the parties, and that the trial itself will take in excess of six months. It would be a travesty to permit such a trial to take place before a review of the disqualification motion can take place. The trial proceeds under a cloud of uncertainty, and many substantial rights will be impaired in the interim. The All Writs Statute is clearly designed to allow a review preliminarily as the majority of Circuits has held. This Court should grant certiorari on this ground alone.

II. This Court Has Held in *Berger v. U. S.*, 255 U. S. 22, That It Is Mandatory for a Judge to Disqualify Himself Once He Is Presented With an Affidavit Showing a Reasonable Basis for Petitioner's Belief of Bias, Prejudice or Lack of Impartiality. The Decision Below Denying the Motion for Disqualification Is in Direct Conflict With That Decision of This Court.

The Judicial Code[3] provides that when a party files

2. In *Texaco, Inc. v. Chandler*, 354 F. 2d 655, 657 (10th Cir. 1965), cert. den., 383 U. S. 936 (1966), the Court said: "Upon an adequate showing, this court has held that it has the 'power and inescapable duty', whether under the all-writs statute . . ., or under its inherent powers of appellate jurisdiction, 'to effectuate what seems to us to be the manifest ends of justice.'"

3. Judicial Code, Section 65, as amended May 24, 1949, c. 139, 28 U. S. C. A. 144.

a sufficient affidavit stating that the judge before whom the action is pending:

> ". . . has a personal bias or prejudice either against him or in favor of any adverse party, such judge shall proceed no further therein, but another judge shall be assigned to hear such proceeding."

The statute was analyzed by this Court in *Berger v. U. S.*, 255 U. S. 22, 65 L. ed. 481 (1921), where it was held that once presented with a "legally sufficient affidavit" even upon information and belief, showing "objectionable inclination or disposition of the judge", it is the judge's duty to "proceed no further in the case." (U. S. at 35). The test of sufficiency of the affidavit, said this Court, is whether it states reasons and facts which give "fair support" to "the belief the litigant entertains" of the existence of "a bent of mind that may prevent or impede impartiality of judgment." This Court continued (U. S. at 35):

> "And in this there is no serious detriment to the administration of justice, nor inconvenience worthy of mention; for of what concern is it to a judge to preside in a particular case? of what concern to other parties to have him so preside? . . .
>
> "Our interpretation of § 21 has, therefore, no deterring consequences, and we cannot relieve from its imperative conditions upon a dread or prophecy that they may be abusively used. They can only be so used by making a false affidavit; and a charge of, and the penalties of, perjury, restrain from that,—perjury in him who makes the affidavit, connivance therein of counsel, thereby subjecting him to disbarment. And upon what inducement and for what achievement? No other than trying the case by one judge rather than another, neither

> party nor counsel having voice or influence in the designation of that other; and the section, in its care, permits but 'one such affidavit'."

In *Offutt v. U. S.*, 348 U. S. 11, 14, 99 L. ed. 11, 16 (1954), Mr. Justice Frankfurter emphasized the importance of not only the fact of justice but also *"the appearance of justice."* He applied this to himself, in *Public Utilities Comm. v. Pollack*, 343 U. S. 451, 96 L. ed. 1068 (1952), stating (U. S. at 466-67, L. ed. at 1079-80) that a judge "must think dispassionately and submerge private feeling on every aspect of a case." However, he observed, judges are but people, and "reason cannot control the subconscious influence of feelings of which it is unaware." Thus, he continued:

> ". . . When there is ground for believing that such unconscious feelings may operate in the ultimate judgment, or may not unfairly lead others to believe they are operating, judges recuse themselves. They do not sit in judgment. They do this for a variety of reasons. The guiding consideration is that the administration of justice should reasonably appear to be disinterested as well as be so in fact."

Similarly, in *In re Murchison, et al.*, 349 U. S. 133, 136, 99 L. ed. 942, 946 (1955), this Court emphasized that "our system of law has always endeavored to prevent even the *probability* of unfairness." (Emphasis supplied.)

In conformity with this Court's decision, the Circuits have held that the essence of the disqualification is the reasonableness of the "belief of the affiant" that bias exists. In *Parrish v. Board of Comm. of Ala. State Bar*, 505 F. 2d 12 (5th Cir. 1974), the court stated that *Berger* instructs that the only determination to be made is "whether the

facts alleged could reasonably lead to the belief that [what] the affidavit says exists in the mind of the [party]." (20).[4] The issue is not, then, the existence, in fact, of actual bias, nor even the reasonableness of a lack of *public* confidence in the impartiality of the judge, but, specifically, whether there is sufficient to show that the *movant's* fear of prejudice or bias is *reasonable*—nothing more. This standard is consonant with the statement by Mr. Justice Frankfurter that the *appearance* of impartiality is as important as actual impartiality. The Fifth Circuit concluded that "a trial court cannot be free from 'any hint or appearance of bias' unless a party's sworn *belief* of the existence of bias, supported by substantial facts, is of primary concern" (21). Thus, an affidavit, pleaded in good faith, and setting forth facts from which such a belief can probably be inferred, is sufficient and mandates the trial judge to "proceed no further therein." As discussed, *infra*, the affidavit filed herein demonstrates the "reasonableness" of the petitioner's belief.[5]

---

4. Judge Tuttle appended an excerpt from a note on disqualification for bias in 79 Harv. L. Rev. 1435, 1446-47 (1966), which said that since the disqualification statute provided that sufficiency of the affidavit depended upon *belief* that bias exists, the purpose of the statute is to ascertain whether there is "a reasonable apprehension on the part of the affiant that the judge may be biased. . . . This formulation shifts the emphasis from the judge's actual state of mind to *the reasonableness of the litigant's fear . . .*" (Emphasis supplied.)

5. The other Circuits are in accord that the test is whether there is "fair support to the charge of a bent of mind that may prevent or impede impartiality of judgment." *U. S. v. Townsend*, 478 F. 2d 1072 (3d Cir. 1973). It is error to refuse disqualification in the face of such affidavit. *Peacock Records, Inc. v. Checker Records, Inc.*, 430 F. 2d 85 (7th Cir. 1970); *Morris v. U. S.*, 26 F. 2d 444 (8th Cir. 1928); *Nations v. U. S.*, 14 F. 2d 507 (8th Cir. 1926). Indeed, the intent of the statute is "to eliminate the 'chance'" that unfairness may exist. *Schmidt v. U. S.*, 115 F. 2d 394, 398 (6th Cir. 1940). The truth and good faith of the affidavit must be presumed, leaving the judge with no alternative. *Bhd. of Loc., Fire & Eng. v. Bangor & Aroostook R. Co.*, 380 F. 2d 570, 576 (D. C. Cir. 1967).

III. The Affidavit Filed in the District Court Clearly Shows "Reasonable Basis" for Petitioner's "Belief That Bias or Prejudice Exists." Failure to Hold It Sufficient for Disqualification Under 28 U. S. C. A. 144 Conflicts With This Court's Direction in *Berger v. U. S.*, 255 U. S. 22.

In *Berger v. U. S.*, 255 U. S. 22, 65 L. ed. 481 (1921), Mr. Justice McKenna said that an affidavit is sufficient "if it show the objectionable inclination or disposition of the judge", upon filing of which he must "proceed no further." (U. S. at 35, L. ed. at 486). This Court further said that, to be legally sufficient, the affidavit need only give "fair support" to the charge of such an inclination in the judge "that may prevent or impede impartiality of judgment" (U. S. at 33-4, L. ed. at 485).[6]

The affidavit discloses that the trial judge was emotionally involved in the advancement of civil rights cases. He stated that since the Supreme Court did not go as far as he thought it should, "we must make major efforts elsewhere." In his speech, he said further "While certainly we will support the concept of integration wherever feasible and oppose all mechanisms of governmental actions to preclude blacks from having a fair option in our society, the *strategy today must go beyond the label or attainment of integration.*" (Emphasis supplied.) Thus, the trial judge left no room for doubt but that he was emotionally involved in all such matters even to the point of going beyond the legal requirements or process. He thus demonstrated that his mind was not geared to be impartial and that the defendants in such cases are at a distinct disad-

6. That the petitioner, defendant below, had "a reasonable basis . . . for the belief" of the existence of bias in the mind of respondent is sharply obvious. As the court noted in *Parrish v. Board of Comm. of Ala. State Bar*, 505 F. 2d 12, 21 (5th Cir. 1974), *Berger* makes it clear that the statute requires only "fair support" for the belief in the *movant's* mind that he may not get a fair trial.

vantage and tremendously prejudiced. That this has reasonably caused petitioner to believe that he will not get a fair trial in this civil rights case is obvious. An active mover in the drive for racial integration, and even more than integration, will sit as a judge *and jury* at such trial; a man who advocates and formulates the essential strategy for black betterment is to apply the law and find the facts in this case with his own personal goals clearly fixed in his own mind.

The affidavit filed sharply demonstrates the "objectionable inclination or disposition of the trial judge", and he should have stepped down from the case as required by the Judicial Code.

CONCLUSION.

It is respectfully submitted that the Court below erred in holding that it had no jurisdiction to review the matter; and, on the merits, the trial judge should have disqualified himself. This Court should grant certiorari and review the order of the Court below.

Respectfully submitted,

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FREEDMAN, BOROWSKY AND LORRY,
Counsel for Petitioner.

APPENDIX A.

28 U. S. C. § 144. Bias or Prejudice of Judge.

Whenever a party to any proceeding in a district court makes and files a timely and sufficient affidavit that the judge before whom the matter is pending has a personal bias or prejudice either against him or in favor of any adverse party, such judge shall proceed no further therein, but another judge shall be assigned to hear such proceeding.

The affidavit shall state the facts and the reasons for the belief that bias or prejudice exists, and shall be filed not less than ten days before the beginning of the term at which the proceeding is to be heard, or good cause shall be shown for failure to file it within such time. A party may file only one such affidavit in any case. It shall be accompanied by a certificate of counsel of record stating that it is made in good faith.

As amended May 24, 1949, c. 139, § 65, 63 Stat. 99.

28 U. S. C. § 1651. All Writs Statute.

(a) The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.

(b) An alternative writ or rule nisi may be issued by a justice or judge of a court which has jurisdiction. June 25, 1948, c. 646, 62 Stat. 944; May 24, 1949, c. 139, § 90, 63 Stat. 102.

APPENDIX B.

IN THE
UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

CIVIL ACTION No. 71-2698.

COMMONWEALTH OF PENNSYLVANIA
— AND —
RAYMOND WILLIAMS, ET AL.

v.

LOCAL UNION 542, INTERNATIONAL UNION OF OPERATING ENGINEERS, ET AL.

OPINION.

HIGGINBOTHAM, *J.* December 4, 1974.

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IN THE
UNITED STATES DISTRICT COURT
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CIVIL ACTION No. 71-2698.

COMMONWEALTH OF PENNSYLVANIA
— AND —
RAYMOND WILLIAMS, ET AL.

v.

LOCAL UNION 542, INTERNATIONAL UNION OF OPERATING ENGINEERS, ET AL.

HIGGINBOTHAM, *J.* December 4, 1974.

OPINION.

(As Corrected by Orders of December 20, 1974 and February 11, 1975.)

INTRODUCTION.

Defendants, Local 542, International Union of Operating Engineers, the Contractors Association of Eastern Pennsylvania and the General Building Contractors Association, Inc., have moved this Court pursuant to 28 U. S. C. § 144 (1970) [1] to refrain from further participation in this

1. The statute provides:

"§ 144. *Bias or prejudice of judge.*

"Whenever a party to any proceeding in a district court makes and files a timely and sufficient affidavit that the judge before whom the matter is pending has a personal bias or prejudice either against him or in favor of any adverse party, such judge shall proceed no further therein, but another judge shall be assigned to hear such proceeding.

"The affidavit shall state the facts and the reasons for the belief that bias or prejudice exsits, and shall be filed not

case. In support of their motions, defendants have filed the affidavits of Robert Walsh, the business manager of Local 542, of Angelo A. Antonucci, the executive secretary of the Contractors Association of Eastern Pennsylvania, and of Charlson I. Mehl, the executive director of the General Building Contractors Association, Inc. Each of these affidavits alleges a personal bias on my part in favor of the plaintiff class in the instant action.[2] For reasons that will hereinafter appear, I have concluded that these affidavits are, as a matter of law, insufficient to justify my disqualification as judge in the instant action. Defendants' motions for disqualification must therefore be denied.

I.

DEFENDANTS' AFFIDAVITS.

In support of their motion for recusal, defendants allege in their affidavits:

1. That the instant case is a class action, brought under the Civil Rights Act of 1964 and other civil rights statutes, charging that defendants have discriminated against the twelve black plaintiffs and the class they represent on the basis of race, and seeking extensive equitable and legal remedies for the alleged discrimination;

---

1. (Cont'd.)

less than ten days before the beginning of the term at which the proceeding is to be heard, or good cause shall be shown for failure to file it within such time. A party may file only one such affidavit in any case. It shall be accompanied by a certificate of counsel of record stating that it is made in good faith."

2. Other aspects of this case have been discussed in an earlier opinion where a preliminary injunction was issued against defendant union because of violence perpetrated by some of its members on some of the black litigants in this case. Commonwealth of Pennsylvania v. Local Union No. 542, International Union of Operating Engineers, 347 F. Supp. 268 (E. D. Pa. 1972).

2. That I will try the instant case without a jury, and that I am black;

3. That on Friday, October 25, 1974, I addressed a luncheon meeting of the Association for the Study of Afro-American Life and History, during the 59th Annual Meeting of that organization, "a group composed of black historians";

4. That in the course of that speech I criticized two recent Supreme Court decisions which involved alleged racial discrimination, and said, *inter alia,* that:

> (a) "I do not see the [Supreme] Court of the 1970's or envision the Court of the 1980's as the major instrument for significant change and improvement in the quality of race relations in America";
>
> (b) "The message of these recent decisions is that if we are to deal with the concept of integration, we must probably make our major efforts in another forum";
>
> (c) "As I see it, we must make major efforts in other forums without exclusive reliance on the federal legal process."

5. That I used the pronoun "we" several times in the course of the speech, and that my use of this pronoun evidences my "intimate tie with and emotional attachment to the advancement of black civil rights";

6. That by my agreement to deliver the speech I presented myself as "a leader in the future course of the black civil rights movement";

7. That my speech took place in "an extra-judicial and community context," and not in the course of this litigation;

8. That the following day, Saturday, October 26, 1974, *The Philadelphia Inquirer* published "an article appearing under a predominant headline on the first page of the metropolitan news section, . . . describing the October 25th meeting and publishing the aforementioned quotes";[3]

9. That approximately 450,000 copies of *The Philadelphia Inquirer* containing this account were distributed publicly on or about October 26, 1974;

10. That this account made "the community at large" aware of my "significant role as a spokesman, scholar and active supporter of the advancement of the causes of integration";

11. That I believe "that there has been social injustice to blacks in the United States"; "that these injustices must be corrected and remedied"; and "that they must be remedied by extra-judicial efforts by blacks, including [myself]";

12. That "the very invitation to speak," "the content of [my] remarks" and my "posing for photographs" after the address identify me as "a leader for and among blacks," and "one of the country's leading civil rights proponents";

13. That I am a "celebrity" within the black community;

14. That "I [have] identified, and [do] identify, [myself] with causes of blacks, including the cause of correction of social injustices which [I believe] have been caused to blacks"; that I have made myself "a participant in those causes, including the cause of correction of social injustices which [I believe] have been caused to blacks";

3. The newspaper article is set out verbatim at pp. A33-A34.

15. That "in view of the applicable federal law," and by reason of my "personal and emotional commitments to civil rights causes of the black community, the black community expectation as to [my] leadership and spokesmanship therein, and the basic tenet of our legal system requiring both actual and apparent impartiality in the federal courts," my "continuation . . . as trier of fact, molder of remedy and arbiter of all issues constitutes judicial impropriety."

These allegations commingle conclusions with facts to an extraordinary degree. Conclusions, of course, are not relevant to this inquiry. *United States v. Townsent*, 478 F. 2d 1072, 1074 (3d Cir. 1973); *Inland Freight Lines v. United States*, 202 F. 2d 169, 171 (10th Cir. 1953). Even if they were, it is difficult to ascertain what defendants mean by certain of the conclusionary allegations they have made. For example, they state that my interest in these matters indicates an "emotional attachment." If, by "emotional attachment," they were implying that I believe that blacks should, in a non-violent, rational fashion, strive to eliminate racial injustice, I would accept that characterization. If, by the use of the phrase "emotional attachment," they were implying a degree of irrationality, I do not accept that conclusion as a reasonable inference from either my appearance before the Association for the Study of Afro-American Life and History, or the contents of my speech to it, or the newspaper article reporting on the speech.

No matter what defendants assert in their conclusionary allegations, the factual core of their affidavits is the newspaper article in *The Philadelphia Inquirer* of October 26, 1974. The legal sufficiency of the affidavits stands or falls on the basis of what I said and did on the occasion of my October 25th speech, as reported in the *Inquirer* article of the following day, and on any rational inferences that can be drawn from that article.

II.

THE LAW OF DISQUALIFICATION.

It is well settled that the mere filing of an affidavit under § 144 does not automatically disqualify me from hearing the instant case. *United States v. Townsend,* 478 F. 2d 1072, 1073 (3d Cir. 1973); *Behr. v. Mine Safety Appliances Co.,* 233 F. 2d 371, 372 (3d Cir.), *cert. denied,* 352 U. S. 942, 77 S. Ct. 264 (1956). Only the filing of a timely and sufficient affidavit will result in such a disqualification. *United States v. Townsend, supra,* at 1073; *Brotherhood of Locomotive Firemen and Engineers v. Bangor and Aroostock R. Co.,* 127 U. S. App. D. C. 23, 380 F. 2d 570 (D. C. Cir.), *cert. denied,* 389 U. S. 327, 88 S. Ct. 437 (1967).

It is my duty, as the judge against whom a § 144 affidavit has been filed, to pass upon the legal sufficiency of the facts alleged in the affidavit. *Townsend v. United States, supra,* at 1073; *Simmons v. United States,* 302 F. 2d 71, 75 (3d Cir. 1962). I may not, however, question either the truth of the allegations or the good faith of the pleader. *United States v. Townsend, supra,* at 1073; *Simmons v. United States, supra,* at 75; *In re Federal Facilities Realty Trust,* 140 F. Supp. 522, 524 (N. D. Ill. 1956). "[T]he section withdraws from the presiding judge a decision upon the truth of the matter alleged." *Berger v. United States,* 255 U. S. 22, 36, 41 S. Ct. 230, 234 (1921); *United States v. Townsend, supra,* at 1073; see *Parker Precision Products Co. v. Metropolitan Life Insurance Co.,* 407 F. 2d 1070, 1077 (3d Cir. 1969).

My disqualification will not be warranted unless a § 144 affidavit "give[s] fair support to the charge of a bent of mind that may prevent or impede impartiality of judgment." *Berger v. United States, supra,* at 33-34, 41 S. Ct. at 233; *United States v. Townsend, supra,* at 1073-74. Mere conclusions will not suffice to support such a disqualification.

United States v. Townsend, supra, at 1074; *Inland Freight Lines v. United States,* 202 F. 2d 169, 171 (10th Cir. 1953). "Facts must be pleaded which show that there exists personal bias and prejudice on the part of the trial judge." *Inland Freight Lines v. United States, supra,* at 171; see *Simmons v. United States, supra,* at 75. Disqualification will be warranted only if such a personal bias is shown. *Ex parte American Steel Barrel Co.,* 230 U. S. 35, 43, 33 S. Ct. 1007, 1010 (1913); *Gallarelli v. United States,* 260 F. 2d 259, 261 (1st Cir. 1958), *cert. denied,* 359 U. S. 938, 79 S. Ct. 654 (1959); *United States v. Hanrahan,* 248 F. Supp. 471, 476 (D. D. C. 1965).[4] The facts pleaded will not suffice to show the personal bias required by the statute if they go to the background and associations of the judge rather than to his appraisal of a party personally. *Parker Precision Products Co. v. Metropolitan Life Insurance Co.,* 407 F. 2d 1070, 1077-78 (3d Cir. 1969); *Price v. Johnston,* 125 F. 2d 806, 811 (9th Cir.), *cert. denied,* 316 U. S. 677, 62 S. Ct. 1106 (1942). "[A judge] must have neighbors, friends and acquaintances, business and social relations, and be a part of his day and generation. * * * the ordinary results of such associations and the impressions they create in the mind of the judge are not the 'personal bias or prejudice' to which the statute refers *United States v. Gilboy,* 162 F. Supp. 384, 400 (M. D. Pa. 1958), quoting *Ex Parte N. K. Fairbank Co.,* 194 F. 978, 989, 990 (M. D. Ala. 1912). Of course, it goes without saying that "[a] judge cannot be disqualified merely because he believes in upholding the law." *Baskin v. Brown,* 174 F. 2d 391, 394 (4th Cir. 1949). If the facts pleaded do not warrant my disqualification, I am not only permitted to continue to preside over the case, I have an affirmative duty not to withdraw. *Simmons v. United States, supra,* at 75; *In re*

4. In this case, where defendant is the moving party, that bias must work either in favor of plaintiffs or against defendant.

Union Leader, 292 F. 2d 381, 391 (1st Cir.), *cert. denied,* 368 U. S. 927, 82 S. Ct. 361 (1961); *Tucker v. Kerner,* 186 F. 2d 79, 85 (7th Cir. 1950); *United States v. Hanrahan,* 248 F. Supp. 471, 475 (D. D. C. 1965); *In re Federal Facilities Realty Trust, supra,* at 524.

III.

THE LEGAL SUFFICIENCY OF DEFENDANTS' AFFIDAVITS.

The legal issue raised by defendants' motion is easily disposed of. I have examined the factual allegations of defendants' affidavits in the light of the law, as set forth above, which governs the recusal of a trial judge for reasons of bias or prejudice. That examination leads me inescapably to the conclusion that, as a matter of law, defendants' affidavits are insufficient to justify my disqualification.

Defendants base their motions on my remarks at the 59th Annual Meeting of the Association for the Study of Afro-American Life and History. Those remarks in no way manifest the personal prejudice and bias that must be shown in order to satisfy the requirements of § 144. *Ex parte American Steel Barrel Co., supra; Inland Freight Lines v. United States, supra; United States v. Hanrahan, supra.* They contain no reference to these defendants or to these plaintiffs or to this suit. They relate to my background and my associations, not to any part in this action personally, and are therefore insufficient to show the personal bias required by the statute. *Parker Precision Products Co. v. Metropolitan Life Insurance Co., supra; Price v. Johnston, supra.* In the words of Chief Judge Parker, they show "at most, zeal for upholding the rights of Negroes under the Constitution and indignation that attempt should be made to deny them their rights. A judge

cannot be disqualified merely because he believes in upholding the Law, even though he says so with vehemence." *Baskin v. Brown, supra,* at 394. The affidavits which recite these remarks are therefore clearly insufficient, as a matter of law, to justify my disqualification.

IV.

DEFENDANTS' AUTHORITIES.

Because these motions for disqualification touch me personally, I resolved, when they were filed, to give defendants' arguments the fullest possible consideration. Accordingly, I carefully reviewed all of the cases cited by Local 542 in its memorandum in support of the § 144 motion.[5] This research has convinced me that defendant's position, though rich in good faith, is devoid of merit. Each of those cases arose out of a factual context radically different from this one. None of them compels the result that defendant urges me to reach here. Only a handful of them, those in which a judge recused himself voluntarily when he had no legal obligation to do so, even suggest that result. And, for reasons that I will presently set out, I emphatically do not believe that these cases of voluntary recusal are apt precedents for my decision on these motions to disqualify.

Defendant Local relies primarily on the sweeping language of Justice McKenna in *Berger v. United States,* 255 U. S. 22, 41 S. Ct. 230 (1921). Its reliance, however, is totally misplaced. In *Berger,* the affidavit filed in support of the motion for disqualification alleged that the presiding judge in an espionage trial, the Honorable Kenesaw Mountain Landis, was prejudiced against the defendants

5. The two other defendant-movants have not filed memoranda of law on this issue. I therefore assume that they have adopted the arguments advanced by Local 542.

because they were German-Americans. The affidavit further alleged that Judge Landis had said, *inter alia,* that "[i]f anybody has said anything worse about the Germans than I have I would like to know it so I can use it"; that "[o]ne must have a very judicial mind, indeed, not to be prejudiced against the German-Americans in this country. Their hearts are reeking with disloyalty"; and that "[y]ou are of the same mind that practically all the German-Americans are in this country, and you call yourselves German-Americans. Your hearts are reeking with disloyalty." 255 U. S. at 28-29, 41 S. Ct. at 231. Unquestionably, these remarks made in the context of an espionage trial with German-American defendants, gave "fair support to the charge of a bent of mind that may prevent or impede impartiality of judgment," 255 U. S. at 33-34, 41 S. Ct. at 233, and amply justified the broad language of Justice McKenna's opinion. The instant case is altogether different on its facts. My remarks, as recited in Mr. Walsh's affidavit, were in no way related to this case. They were addressed to a group of scholars, not to union men generally or to operating engineers in particular. They referred neither to the defendants here nor to the plaintiffs, neither to employment discrimination suits generally nor this cause in particular. They did not promise partiality to black in civil rights actions. If anything, they encouraged blacks to explore forums other than the federal courts for the redress of their grievances. While it is concededly difficult for a man to act as judge in his own case, I do not find that my remarks gave "fair support to the charge of a bent of mind that may prevent or impede partiality of judgment." Consequently, *Berger v. United States, supra,* is, on its facts, clearly distinguishable from the instant case. According to William Shakespeare, "Macduff was from his mother's womb untimely ripp'd."

Macbeth, Act V, Scene VIII. Similarly, in an attempt to buttress defendant's memorandum, Mr. Justice McKenna's language in *Berger* was from its context irrelevantly "ripp'd."

The decision of the Court of Appeals for the Third Circuit in *United States v. Townsend, supra,* though liberally cited in defendant Local's memorandum, likewise provides scant support for defendant's position in this matter. In *Townsend,* the affidavit filed in support of the disqualification motion asserted, *inter alia,* that the trial judge in a prosecution for a selective service violation, had said at a pretrial conference that "he felt a duty to pressure conscientious objectors into submitting to induction and that a uniform thirty months sentence was the best way to effectuate that policy." 478 F. 2d at 1073. This allegation, said the Court of Appeals, was sufficient to show "a bent of mind that may prevent or impede impartiality of judgment." 478 F. 2d at 1074. Again, the facts in this case are wholly different. My remarks were not directed to these plaintiffs or these defendants; they did not concern the issues that are controverted in this case nor did they intimate any view on the merits of this case. Defendant's reliance on *United States v. Townsend, supra,* is therefore manifestly misplaced.

Defendant also quotes extensively from Mr. Justice Frankfurter's opinion in *Public Utilities Commission v. Pollak,* 343 U. S. 451, 72 S. Ct. 813 (1951), where he disqualified himself from participating in the Supreme Court's disposition of that case. In all candor, I must confess that this citation shed very little light on the issue before me. My respect for Mr. Justice Frankfurter is deep and long-standing. Nevertheless, his personal antipathy to the installation of FM radio receivers on public buses has absolutely nothing to do with the legal sufficiency of the

facts alleged in defendants' affidavits. Mr. Justice Frankfurter's views on the propriety of disqualification are more accurately revealed by his conduct in *United States v. Hutcheson,* 312 U. S. 219, 61 S. Ct. 463 (1941). Prior to joining the court, he had co-authored a classical critique of abuses by the federal courts of their equitable jurisdiction in labor disputes. F. Frankfurter and N. Green, *The Labor Injunction* (1930). He had also helped to draft the Norris-LaGuardia Act, 47 Stat. 70, 29 U. S. C. §§ 101 *et seq.* (1970), which was designed to curb these abuses. Yet in *United States v. Hutcheson, supra,* one of the leading cases interpreting the scope of the Act, he not only did not disqualify himself, he wrote the Court's opinion.

Similarly, as a United States Senator, Mr. Justice Black had been a principal author of the Fair Labor Standards Act, 52 Stat. 1060, 29 U. S. C. §§ 201 *et seq.* (1970). He nevertheless heard, and voted with the Court majority in, the case which upheld the constitutionality of the Act, *United States v. Darby,* 312 U. S. 100, 61 S. Ct. 451 (1941).[6]

The other cases cited by defendant are no more persuasive than *Berger, Townsend* and *Pollak.* In *Peacock Records, Inc. v. Checker Records, Inc.,* 430 F. 2d 85 (7th Cir. 1970), the trial judge had refused to accept testimony of witnesses to the effect that they had perjured themselves in an earlier trial of the same issues. The Court of Appeals held that the trial judge's prejudgment that the new testimony was perjured, a prejudgment that was not supported by the record of the first trial, showed sufficient prejudice to justify disqualification. That is not this case.

6. For an extended discussion of these and other instances where Supreme Court Justices have not disqualified themselves from cases where they were arguably prejudiced or biased, see the opinion of Mr. Justice Rehnquist in Laird v. Tatum, 409 U. S. 824, 93 S. Ct. 7 (1972).

At issue in *Morris v. United States,* 26 F. 2d 444 (8th Cir. 1928), were the timeliness and the good faith of the motion for disqualification. Neither of those issues is disputed here.

In *Nations v. United States,* 14 F. 2d 507 (8th Cir. 1926), the affidavit held sufficient to justify disqualification alleged that the trial judge had stated, prior to trial, that the defendant was guilty of the crime he had been charged with. That is not this case.

In *Schmidt v. United States,* 115 F. 2d 394 (6th Cir. 1940), affiants alleged that the trial judge had assisted the prosecutors in the preparation of their case against the affiants. Clearly, that is not this case either.

In *Gladstein v. McLaughlin,* 230 F. 2d 769 (9th Cir. 1955), the trial judge had initiated, *sua sponte,* a disbarment proceeding against affiant. The latter's affidavit recited statements by the judge which demonstrated prejudice toward the affiant individually and toward a class to which he belonged. Not unnaturally, the Court of Appeals found the affidavit sufficient to disqualify the judge. Once more, however, that case is not this one. In *Connelly v. United States District Court,* 191 F. 2d 692, 695 (9th Cir. 1951), the trial judge had stated his belief that petitioner was a Communist, that Communists hid behind the Constitution, that they "would overthrow that very document and the country that it rests upon," and that "the Communist Party was an illegal conspiracy to overthrow the government of the United States." Though the affidavit reciting these facts sufficed to justify disqualification, the case itself can scarcely be said to control the instant one. In *Offutt v. United States,* 348 U. S. 11, 75 S. Ct. 11 (1954), such great antagonism had developed between the trial judge and defense counsel during a criminal trial that the Supreme Court held it appropriate for another judge to preside over criminal contempt proceedings against the

defense attorney. *Offutt* does not control the issue here either.

In addition to *Public Utilities Commission v. Pollak, supra,* defendant has referred this Court to three other cases where judges have voluntarily disqualified themselves. They furnish no support for defendant's position on the legal issue to be determined here. The presiding judge in *United States v. Gilboy,* 166 F. Supp. 220 (M. D. Pa. 1958) recused himself, not because of the legal sufficiency of the facts pleaded in the affidavit urging disqualification, but *sua sponte* in order to expedite affiant's trial for conspiracy. Similarly, in *United States v. Quattrone,* 149 F. Supp. 240 (D. D. C. 1957), the trial judge emphatically stated that he was not required by law to recuse himself, but said that he did so only because, having discussed the case with an individual who was not counsel of record, he might appear to have been influenced by that individual. Finally, in *United States v. Valenti,* 120 F. Supp. 80 (D. N. J. 1954), the presiding judge recused himself *sua sponte* out of an excess of caution, but only after he had carefully considered and rejected the legal sufficiency of the facts pleaded in the affidavit in support of disqualification. In each of these cases, however, the recusing judge understandably felt obliged to offer some explanation for his action. I feel an analogous obligation to explain, not just why I have chosen to remain in this case, but why, in my judgment, it is absolutely essential that I *not* withdraw from this case.

V.

BEING BLACK, AND THE APPEARANCE OF IMPARTIALITY

When stripped to its essence, the gravamen of defendants' objection seems primarily based on the following express or implicit allegations:

(1) I am black;

(2) Some of the defendant union's members are white;[7]

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7. Defendant union now casts their case in racial tones and seems imply that it is a challenge between blacks on one side, as plaintiffs, and whites on the other as defendants. Yet, at an earlier date, when this matter was before me on a motion for preliminary injunction, counsel for defendants, Abraham E. Freedman, Esquire, constantly argued that what was involved here was a dispute between some blacks on the plaintiff's side and some blacks and whites on the union side. He emphasized that Mr. Eaddy, a plaintiff who was black, attacked Mr. Holland, who was black, and Holland was a union official. See transcript of June 29, 1972, p. 312, and 347 F. Supp. 268, 273-74, 278. At that time, Mr. Freedman emphasized time and time again that there were many members of defendant's union who were black and thus there are certain inherent contradictions between the racial categorization as to defendant's union which Mr. Freedman, their counsel, now makes as compared to those which he previously asserted on June 29, 1972, when he argued:

> "I would say to Your Honor this, too, the twelve plaintiffs here, Your Honor, are all out from Benjamin Franklin No. 1—I think it is No. 1—and I think a couple from No. 2. *The union has about three hundred black men in this union,* men who work very regularly, men who make much or more than most white men, men who are called to jobs without having to go through the union hall because they are called by the employers. Most of the blacks, Your Honor, most of the blacks are called by the employers and put on a regular basis where they are called without having to go through the union hall." (N. T., pp. 312-13) (emphasis added)
>
> I had never perceived this case as one which was an exclusively black versus an exclusively white confrontation, particularly because of the arguments which Mr. Freedman had previously made at great length when the union was resisting the motion for preliminary injunction. However, if defendants desire to cast their case in the posture of blacks as plaintiffs versus whites as defendants (thus disregarding its purported interracial membership and thereby assuming that the 300 black members in the union have no stake in this matter), for the purpose of the instant motion I will accept the categorizations which defendants imply in their petitions.
>
> I have no knowledge of the racial composition of the Contractor's Association.

(4) "By agreeing to appear before such group [The Association for the Study of Afro-American Life and History] Judge Higginbotham presented himself as a leader in the future course of the black civil rights movement,"[8] and

(5) By my appearance at the Association's meeting and/or by the substance of the remarks I actually made or as they were quoted in the newspaper, "the continuation of [Judge Higginbotham] as finder of fact, molder of remedy, and arbiter of all issues constitutes judicial impropriety."[9]

A. *Being Black.*

I concede that I am black. I do not apologize for that obvious fact. I take rational pride in my heritage, just as most other ethnics take pride in theirs. However, that one is black does not mean, ipso facto, that he is anti-white; no more than being Jewish implies being anti-Catholic, or being Catholic implies being anti-Protestant. As do most blacks, I believe that the corridors of history in this country have been lined with countless instances of racial injustice.[10] This is evident by the plain historical

8. Union affidavit, ¶ 2(e).

9. Union affidavit, ¶ 2(m).

10. For general background, see R. Bardolph, *The Civil Rights Record* (1970); J. Blassingame, *Black New Orleans* (1973); J. Blassingame, *The Slave Community* (1972); S. Elkins, *Slavery* (1959); J. H. Franklin, *From Slavery to Freedom* (4th ed. 1974); G. Fredrickson, *The Black Image in the White Mind* (1971); L. Green, *The Negro in Colonial New England* (1942); W. Jordan, *White Over Black* (1968); G. Myrdal, *An American Dilemma* (1944); B. Quarles, *The Negro in the Making of America* (rev. ed. 1969); K. Stampp, *The Peculiar Institution* (1956); C. Woodson & C. Wesley, *The Negro in Our History* (11th ed. 1966); C. V. Woodward, *Origins of the New South* (1951); C. V. Woodward, *The Strange Career of Jim Crow* (2d rev. ed. 1966). For the best bibliography, see A. Hornsby, *The Black Almanac* 169 (1972). For an anthology, see *Civil Rights and the American Negro* (A. Blaustein & R. Zangrando eds. 1968).

fact that for more than two and a half centuries, millions of blacks were slaves under the rule and sanction of law—a fate which confronted no other major minority in this country.[11] Every presidential commission[12] and almost

11. See the pioneer works of D. Bell, *Race, Racism and American Law* (1974) and M. F. Berry, *Black Resistance/White Law* (1971); T. Emerson, D. Haber, N. Dorsen, *Political and Civil Rights in the United States*, (3rd ed. 1967) and 1973 Supplement, Chapters 13-21; 2 L. Pollak, *The Constitution and the Supreme Court* 201-389 (Meridan ed. 1968). See also H. Abraham, *Freedom and the Court*, Ch. VII (2d ed. 1972); Higginbotham, "Racism and the Early American Legal Process, 1619-1896", 407 ANNALS 1 (1973), and Book Review, "Race, Racism and American Law", 122 U. Pa. Rev. 1044-69 (1974).

12. The first commission on civil rights appointed by any president was created by President Harry Truman, Executive Order 9808. In 1947, the President's Committee on Civil Rights filed a report, "To Secure These Rights," which stated:

> "Our American heritage of freedom and equality has given us prestige among the nations of the world and a strong feeling of national pride at home. There is much reason for that pride. But pride is no substitute for steady and honest performance, and *the record shows that at varying times in American history the gulf between ideals and practice has been wide.* We have had human slavery. We have had religious persecution. We have had mob rule. *We still have their ideological remnants in the unwarrantable 'pride and prejudice' of some of our people and practices.* From our work as a Committee, we have learned much that has shocked us, and much that has made us feel ashamed. But we have seen nothing to shake our conviction that the civil rights of the American people—all of them—can be strengthened quickly and effectively by the normal processes of democratic, constitutional government. That strengthening, we believe, will make our daily life more and more consonant with the spirit of the American heritage of freedom. *But it will require as much courage, as much imagination, as much perseverance as anything which we have ever done together.* The members of this Committee reaffirm their faith in the American heritage and in its promise." [Id. at 9-10] (emphasis added).

Sadie T. M. Alexander, famed Philadelphia lawyer and wife of the late Judge Raymond Pace Alexander, was a member of this first Presidential Commission. See also *Report of the National Advisory Commission on Civil Disorders* (Washington, D. C.: U. S. Govern-

every Supreme Court opinion [13] dealing with racial matters have noted the fact that, in this country, there has often been racial injustice for blacks.

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12. (Cont'd.)
ment Printing Office, 1968); National Commission on the Causes and Prevention of Violence, Final Report, "To Establish Justice, To Ensure Domestic Tranquillity" xxi, 8, 10, 13-15 (1969); 1 National Commission on the Causes and Prevention of Violence, Staff Report, "Violence in American: Historical and Comparative Perspectives" 38-41 (1968). Cf. Milton S. Eisenhower, *The President is Calling* 2-4 and Ch. 23 (1974).

13. See n. 11, and the facts involved in the following cases: *Prigg v. Pennsylvania,* 41 U. S. (16 Pet.) 539 (1842); *Dred Scott v. Sandford,* 60 U. S. (19 How.) 393 (1857); *Civil Rights Cases,* 109 U. S. 3 (1883); *Plessy v. Ferguson,* 163 U. S. 537 (1896); *Berea College v. Kentucky,* 211 U. S. 45 (1908); *Hodges v. United States,* 203 U. S. 1 (1906); *James v. Bowman,* 190 U. S. 127 (1903); *Baldwin v. Franks,* 120 U. S. 678 (1887); *United States v. Harris,* 106 U. S. 629 (1883); *United States v. Cruikshank,* 92 U. S. 542 (1876); *United States v. Reese,* 92 U. S. 214 (1876); *United States v. Powell,* 151 F. 648 (C. C. N. D. Ala. 1907), *aff'd per curiam,* 212 U. S. 564 (1909).
The following cases indicate the past problem of racial injustice and efforts to eliminate it:

(1) *Voting.* South Carolina v. Katzenbach, 383 U. S. 301 (1966) (implementation of 1965 voting rights act); Smith v. Allwright, 321 U. S. 649 (1944); Grovey v. Townsend, 295 U. S. 45 (1935); Nixon v. Herndon, 273 U. S. 536 (1927); Anderson v. Martin, 375 U. S. 399 (1964); Nixon v. Condon, 286 U. S. 73 (1932); Cf. Reynolds v. Sims, 377 U. S. 533 (1964); Gray v. Sanders, 372 U. S. 368 (1963) (one man-one vote); Baker v. Carr, 369 U. S. 186 (1962). See also Burke Marshall, *Federalism and Civil Rights* (1964).

(2) *Education.* Swann v. Charlotte-Mecklenburg Board of Education, 402 U. S. 1 (1971); Brown v. Board of Education, 347 U. S. 483 (1954); McLaurin v. Oklahoma State Regents, 339 U. S. 637 (1950); Sweatt v. Painter, 339 U. S. 629 (1950); Cooper v. Aaron, 358 U. S. 1 (1958); Griffin v. County School Board of Prince Edward County, 377 U. S. 218 (1964); Gong Lum v. Rice, 275 U. S. 78 (1927); Missouri ex rel. Gaines v. Canada, 305 U. S. 337 (1938); Cumming v. County Board of Education, 175 U. S. 528 1899).

(3) *Housing.* Tillman v. Wheaton-Haven Recreation Ass'n, 410 U. S. 431 (1973); Jones v. Alfred H. Mayer

Thus a threshold question which might be inferred from defendants' petition is: Since blacks (like most other thoughtful Americans) are aware of the "sordid chapter in American history"[14] of racial injustice, shouldn't black judges be disqualified *per se* from adjudicating cases involving claims of racial discrimination? Defendants do not go so far as to precisely assert that black judges should *per se* be disqualified from hearing cases which involve racial issues, but, as will be demonstrated hereinafter the absolute consequence and thrust of their rationale would amount to, in practice, a *double standard* within the federal judiciary. By that standard, white judges will be permitted to keep the latitude they have enjoyed for centuries in discussing matters of intellectual substance, even issues of human rights and, because they are white, still be permitted to later decide specific factual situations involving the principles of human rights which they have discussed previously in a generalized fashion. But for black judges, defendants insist on a far more rigid standard, which would preclude black judges from ever discussing race relations even in

13. (Cont'd.)

Co., 392 U. S. 409 (1968); Shelley v. Kraemer, 334 U. S. 1 (1948); Buchanan v. Warley, 245 U. S. 60 (1917); Hansberry v. Lee, 311 U. S. 32 (1940); Corrigan v. Buckley, 271 U. S. 323 (1926); Richmond v. Deans, 281 U. S. 704 (1930); Harmon v. Tyler, 273 U. S. 668 (1927); Barrows v. Jackson, 346 U. S. 249 (1953).

(4) *Employment.* Griggs v. Duke Power Co., 401 U. S. 424 (1971); Steele v. Louisville & N. R. R., 323 U. S. 192 (1944).

(5) *Public Accommodations.* Katzenbach v. McClung, 379 U. S. 294 (1964); Heart of Atlanta Motel, Inc. v. United States, 379 U. S. 241 (1964); Burton v. Wilmington Parking Authority, 365 U. S. 715 (1961).

(6) *Prohibition of racial violence.* Griffin v. Breckenridge, 403 U. S. 88 (1971); United States v. Johnson, 390 U. S. 563 (1968); Pierson v. Ray, 386 U. S. 547 (1967).

14. William H. Hastie, "Toward an Equalitarian Legal Order, 1930-1950," 407 ANNALS 18, 19 (1973).

the generalized fashion that other justices and judges have discussed issues of human rights. Under defendants' standards, if a black judge discusses race relations, he should thereafter be precluded from adjudicating matters involving specific claims of racial discrimination.

To suggest that black judges should be so disqualified would be analogous to suggesting that the slave masters were right when, during tragic hours for this nation, they argued that only they, but not the slaves, could evaluate the harshness or justness of the system.[15] If defendants are not implying this extreme position about blackness *per se* as a basis for disqualification, then one must examine the rationale of their other allegations.

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15. As an example, Judge Ruffin, author of the infamous opinion in State v. Mann, 13 N. C. 263 (1829), speaking in 1855 before the State Agricultural Society of North Carolina, said:

> "I very frankly avow the opinion, that our mixed labor of free white men of European origin and of slaves of the African race, is as well adapted to the public and private ends of our agriculture as any other could be—making our cultivation not less thorough, cheap and productive than it would be, if carried on by the whites alone, and far more so than the blacks by themselves would make it; and, therefore, that it has a beneficial influence on the prosperity of the country, and the physical and moral state of both races, rendering both better and happier than either would be here, without the other."
>
> * * *
>
> *We know that our slaves are generally humble, obedient, quiet and a contented and cheerful race of laborers.* Scattered over the plantations in rural occupations, they are never riotous or dangerous, as the same number of uneducated working men have often been in other parts of our country. Slaves are no part of this State, with no political power, and seek no violent or sudden changes in the law or policy of the country; and where slavery exists labor and capital never come in conflict, because they are in the same hands, and operate in harmony. It is not, then, a blot upon our laws, nor a stain on our morals, nor a blight upon our land." (emphasis added) 8 Publications of the North Carolina Historical Commission (Part 4), 4 The Papers of Thomas Ruffin 329-337; see A. L. Higginbotham, Race and the American Legal Process, unpublished monograph, Ch. II.

B. *The Perniciousness of Appearing Before The Association for the Study of Afro-American Life and History?*

The newspaper clipping and the pleadings state that I was speaking to "a group of black historians"[16] at the 59th Annual Meeting of the Association for the Study of Afro-American Life and History.[17] This organization was not a labor group, not an institute of management, not a political party, not the Black Panthers, not any entity which on or off the record has ever had a history antagonistic to those white Americans who believe in equal justice under the law. When compared with the meetings or conventions of labor unions, management associations, political parties or parti-

16. Defendants rely on the newspaper article which said that I spoke to "a group of black historians." Actually, it was an interracial group of historians, but most of them were black.

17. The souvenir juornal and the program of this 59th Annual Meeting are attached as appendices B and C. The inside front cover of the souvenir journal notes:

> "The Association for the Study of Afro-American Life and History was conceived by Dr. Carter G. Woodson as an instrument to promote appreciation of the life and history of the Black American, to encourage an understanding of present status, and to enrich the promise of the future.
>
> In 1915, there was, as now, tremendous neglect of the study of the Negro and most other racial groups. Out of this lack of understanding, misinformation about race and color flourished. The founding of The Association for the Study of Afro-American Life and History provided needed reconstruction of thought based on historical truth about of black people, ancient history and worthwhile contributions to the founding and the continuation of the United States of America.
>
> JOIN NOW
>
> The Association for the Study of Afro-American Life and History, a major national organization in the twin fields of life and history, *is composed of members of all racial groups in America.* We welcome your membership, and offer full participation in meetings, conferences and conventions and in other activities." (emphasis added)

The primary publication of the Association of Afro-American Life and History is the *Journal of Negro History.*

san activist groups, a meeting of historians is almost in definition as calm and dispassionate a gathering as one can find on the national convention scene. More ofen than not, historians suggest tentative hypothesis about social issues by analyzing the ebb and flow of the tides of history. Generally, they do not volunteer precise answers to those specific fact-finding aspects of the litigation process which are partially dependent on issues of the credibility of proffered evidence. In his classic Nora and Edward Ryerson lecture at the University of Chicago, on April 23, 1974, famed scholar John Hope Franklin,[18] speaking on "The Historian and Public Policy," suggested:

> *One might argue that the historian is the conscience of his nation,* if honesty and consistency are factors that nurture the conscience. Perhaps that is too much to claim for the historian who, after all, is not in the business of protecting the morals of a people.
>
> It would be enough if in our time the historian were to look at our many public policies that we claim to be firmly based in the hallowed past and see if that is in fact the case. As we approach the bicentennial of our national independence and as we pursue many of our public policies in the

18. Professor John Hope Franklin is the Vice President of the Association for the Study of Afro-American Life and History, former Chairman of the History Department of the University of Chicago, and presently John Matthews Manly Distinguished Service Professor, University of Chicago. On Friday, October 25, 1974, he gave the major morning lecture, "George Washington Williams and the Beginnings of Afro-American Historiography." Other major books by John Hope Franklin related to the race relations issues are: *The Free Negro in North Carolina, 1790-1860* (1969); *From Slavery to Freedom: A History of Negro Americans,* (4th ed. 1974); *The Militant South, 1800-1860* (1964); *Reconstruction After the Civil War* (1963); *The Emancipation Proclamation* (1965); *Land of the Free* (1970); *Illustrated History of Black Americans* (1973).

> name of the founding fathers—our black policy, our red policy, our foreign policy, or whatever—the historian and, indeed, all of us should take a hard look at what we ascribe to the founding fathers. But in this antepenultimate year of our bicentennial, the time is at hand for us to recognize the fact that deep veneration is one thing and uncritical approbation is quite another. If we cannot celebrate their achievements and, at the same time, recognize their human frailties which led them to make numerous mistakes, we are unworthy of the legacy we claim to celebrate.
>
> The people, yes, the people, shall judge; but they require a sound basis for making judgments. They will have that basis if and when they know what has happened, why it has happened and, consequently, how the public policies growing out of historical events or shaping those events can serve the common good. If, then, the people prefer to ignore their past mistakes and prefer to live in a world of fantasy and make-believe, they will deserve to suffer the *fate of repeating the grave errors that they could easily have avoided.* (Emphasis added.)[19]

If historians meet as the "conscience of a nation" so that we will not ". . . suffer the fate of repeating the grave errors that [we] could easily have avoided," what is it that is so deplorable about appearing before a group of "black historians,"[20] whose purpose it is to analyze the strengths and the frailties of our society? Why is it so intrinsically wrong to speak to these historians on the sub-

19. P. 17.

20. See n. 16, *supra.*

ject "Racism and the American Legal Process: Where Have We Been and Where Are We Going?"

Would it have been permissible for a black to have talked to white historians, or is there something particularly opprobrious about speaking to any group of historians which thereafter taints one's ability to participate in the judicial process? Do petitioners suggest that it is more sinister for a black judge to speak to black historians than for the Chief Justice of the United States Supreme Court to speak to the National Conference of Christians and Jews?[20a] Should the distinguished Chief Justice be barred in the future from adjudicating cases where claims of religious or racial bigotry are urged, simply because he spoke to a distinguished group which supports the concepts of the brotherhood of man, the golden rule, and fair play?

Many judges of this court have spoken to bar associations, including those specialized sections of the bar such as the plaintiff's personal injury bar, or the defense bar. Should such judges be forever barred from adjudicating personal injury cases involving plaintiffs or defendants? Is there anything more malevolent in speaking to a group of black historians about equal justice under the law than for a Catholic, Jewish, or Protestant judge to speak in his cathedral, synagogue or church on the Sermon on the Mount, or the Torah? If a Catholic judge spoke to a group of Catholic historians, should he be forever barred from adjudicating cases involving the constitutionality of state appropriations disbursed to parochial schools? Was my speech malevolent because its occasion was a national meeting? Does something inherently more pernicious occur when 100 black historians get together at a national conference than when 20 meet in a local setting?

20a. See the address of Mr. Chief Justice Burger at the 1972 Annual Dinner of the National Conference of Christians and Jews, November 16, 1972.

C. *Is It Permissible for Black Judges to Be Scholars in the Race Relations Field?*

Again and again in their petition and memorandum of law, defendants charge that by my appearance before the Association for the Study of Afro-American Life and History "the community at large was, as a consequence, made aware of Judge Higginbotham's significant role as a spokesman, scholar and active supporter of the advancement of the causes of integration."[21] Do defendants think it sinister that some individuals consider me a scholar in the race relations field? Is it that scholarship which is their ultimate grievance?[22] We have noted previously that, while at Harvard, Mr. Justice Frankfurter wrote the classic critique of abuses by the federal courts of their equitable jurisdiction in labor disputes. F. Frankfurter and N. Green, *The Labor Injunction* (1930). He also helped to draft the Norris-LaGuardia Act, 47 Stat. 70, 29 U. S. C. §§ 101, *et seq.*, which was designed to curb these abuses. Yet no one asserted that his prior scholarship precluded him from sitting as a Justice in *U. S. v. Hutcheson, supra,* one of the leading cases interpreting the scope of the Norris-LaGuardia Act. He not only did not disqualify himself, he wrote the Court's opinion. If Justice Frankfurter, after years of scholarship at Harvard, had not lost the capacity to construe impartially a statute which he drafted, why should a black judge be disqualified because he has studied the legal history of racism and taught the subject at some of the leading universities of this nation?

In this Circuit, former Chief Judge Biggs for decades displayed a keen interest and wrote decisively in the

21. See ¶ 9, p. 3 of the motion and ¶ 2(j), p. 3 of defendant union's affidavit.

22. The terms "spokesman" and "active supporter" are conclusionary, and to the extent that they are permissible inferences, I have dealt with that aspect at pp. 4-5.

forensic psychiatry field. Probably more than any federal judge in the nation he was responsible for analyzing the deficiencies of the legal process when it dealt with issues of mental illness. In 1954, he received the Isaac Ray Award of the American Psychiatric Association, which is granted annually to the ". . . individual deemed fit and deserving of such honor in the field of the relationship between psychiatry and jurisprudence." In 1955, he published his classic book, *The Guilty Mind.* It was reviewed in the *Legal Intelligencer* of April 4, 1956 as follows:

> The Dr. Ray Award Committee chose even better than it knew. *The Guilty Mind* revealed something more than an able jurist's insight in an allied field. It embodied a lifelong study, extensive experience, and profound sympathy. Here, in review, passes a pageant of history—the primitive codes of savage tribes, the practices of ancient civilizations, the superstitution of the middle ages, the brutality of yesterday and today. The story of the law and the mentally ill is told movingly, with sympathy and scholarship; a shocking and sobering story even for those who are familiar with the outline and many of the facts.

Should, after 1954, Judge Biggs have been disqualified from hearing cases involving mental illness because the American Psychiatric Association recognized his tremendous scholarly talents and gave him their most coveted award?

Complex patent cases in this district were constantly assigned to the late Judge William H. Kirkpatrick. Should he have been disqualified because of his nationally recognized expertise in patent law? Are defendants suggesting that, except for black judges who become scholars on race

and the American legal process, all other judges may be scholars in *any* field in which they may later be required to make an adjudication?

Defendants' objection to scholarship again displays their insistence on a different standard for black judges. Presumably defendants should not fear scholarship, but should instead be pleased that they would not have to "educate" a judge on the rudiments of the field.

VI.

THE SUBSTANCE OF THE SPEECH AND RELEVANT PRECEDENT.

If defendant's claim cannot rest on disqualification *per se* because I am black, if it cannot rest on the fact that a black judge spoke to a conference of black historians, if it cannot rest on the fact that some think I have a reputation for scholarship in matters dealing with race and the legal process, then the viability of the motions must depend on the content of the speech, either as actually given or as reported in the newspaper clipping which was attached as an exhibit to their motions.

Because defendants' motions contained some outlandish constructions of the content of the newspaper article and hypothesized other circumstances which purportedly attended my speech, I am attaching as appendices:[23]

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23. I recognize that the basis of disqualification must be the newspaper article and what it asserts that I said; however, I am voluntarily including these appendices so that there can be no question about what was in fact said and the nature of the organization to which I spoke. The appendix copy of the speech is identical in every respect to that which was made available to the press, except for typographical corrections. The substance of the speech I gave was the same as that of the written text in Appendix 1; though some portions of the speech were summarized because of time limitations, much of it was read word for word as it appears in the appendix.

(1) the speech as actually prepared for the conference, copies of which were made available to the press at their request.

(2) The official program of the 59th Annual Meeting of the Association for the Study of Afro-American Life and History, and

(3) the souvenir journal of the convention.

There is an extraordinary gap between the facts as reported in the newspaper article and the inferences, speculation and hunches which defendants assert in their motions for disqualification. Defendants apparently are relying on the newspaper clipping as their basis for disqualification, yet in their brief they make assertions which exemplify more fantasy than logic. As an example, they assert that "During his speech Judge Higginbotham spoke in emotional terms of solidarity, . . .";[24] yet not once is the word "solidarity" used or implied[25] in the newspaper clipping, nor was it used in the speech. What is the basis for their inference that I spoke of solidarity in emotional terms? The article notes:

> "Judge Higginbotham told the delegates, who interrupted his speech with applause, that his scepticism (of the Supreme Court) had been expressed by Supreme Court Justices. He identified Justice Thurgood Marshall as one of them."

Thus, the core for all of defendants' inferences is the word "applause." But applause does not necessarily mean that a presentation was made in "emotional terms." To

24. Defendant union's brief, p. 2.

25. Defendants apparently assume that the term "we" is a synonym for "solidarity." See my discussion of this assumption, *infra*.

imply that it was made in "emotional terms" is predicated on the assumption that several hundred black scholars cannot react with enthusiasm to a rational and non-emotional address. To say that the speaker spoke in terms of "solidarity" must be predicated on a similar assumption, that black scholars cannot react with enthusiasm to a rational presentation until the declarant uses the term "solidarity."

Defendants assert that my use of the term "we" indicates an emotional identification with my audience which requires my disqualification. Perhaps defendants would have wanted me to say "*You* black people must pursue *your* options for equal justice in other forums." Maybe that approach would have been permissible. Perhaps, on the Fourth of July, they would want orators to say "*You* hold these truths to be self evident, that all men are created equal . . . ," but never declare that "*We* hold these truths to be self evident." If defendants' rationale is accepted, whenever an orator says "we" in such a context, he is involved in a conspiracy which precludes his capacity to judge thereafter with impartiality.

Finally, defendants assert that "By agreeing to appear before such group, Judge Higginbotham presented himself as a leader in the future course of the black civil rights movement."[26] The defendants overstate their case and probably unintentionally denigrate the black civil rights movement. They confuse the civil rights movement with the study of history.

Yet even if the inferences asserted are permissible, the crux of their objection has to be that I dared to speak out on Racism and the American Legal Process to a group of black historians, and that the substance of my comments indicates a bias that will affect this case. The entire article read as follows:

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26. Defendant union's affidavit at 2, ¶ 2(e).

BLACKS TOLD NOT TO RELY ON SUPREME COURT ALONE

by Acel Moore
Inquirer Staff Writer

U. S. District Court Judge A. Leon Higginbotham, Jr. told a group of black historians Friday that blacks can no longer rely "exclusively" on the Supreme Court as the major instrument for social justice.

"I do not see the court of the 1970s or envision the court of the 1980s as the major instrument for significant change and improvement in the quality of race relations in America," Judge Higginbotham said.

Higginbotham leveled criticism at the Nixon Supreme Court near the end of his luncheon speech before delegates attending the 59th annual meeting of the Association for the Study of Afro-American Life and History (ASALH) at the Benjamin Franklin Hotel.

In his criticism, Higginbotham cited two recent Supreme Court decisions: the Detroit school-busing case, in which the court overturned a plan that would have provided busing between districts to achieve integration, and a public accommodation case involving the Moose Lodge in Harrisburg.

In the Moose Lodge case, the court ruled that the Fourteenth Amendment could not deal with discrimination in a place of public accommodation.

"The message of these recent decisions is that if we are to deal with the concept of integration, we must probably make our major efforts in another forum," Higginbotham told the gathering.

> Judge Higginbotham told the delegates, who interrupted his speech with applause, that his "skepticism (of the Supreme Court) had also been expressed by Supreme Court justices." He identified Justice Thurgood Marshall as one of them.
>
> "As I see it, we must make major efforts in other forums without exclusive reliance on the federal legal process," said Higginbotham.
>
> Higginbotham praised the high court under the late Chief Justice Earl Warren for its decisions on integration.

From this article the only rational inferences which can be drawn, if one assumes that the reporter's comments were accurate, are that the historians were told:

(1) that they should not rely on the Supreme Court alone;

(2) that I am critical of the current Supreme Court for its decisions in two recent cases, and

(3) that this criticism had been expressed by justices of the United States Supreme Court, including Justice Thurgood Marshall.

Even if the reporter was accurate in his conclusionary summaries, the article does not imply in any respect that I would not follow any mandate of the Supreme Court, or any applicable federal law; for of course I will. Taking the article in the light most favorable to defendants, I merely repeated what Judge William Hastie has said about an earlier period of the court's history.[27]

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27. See n. 28, *infra*.

VII.

THE PRECEDENTS OF HASTIE, STEWART, ALEXANDER AND BURGER.

One of the most profound statements ever made on race and the American legal process was Judge William H. Hastie's authoritative article, "Toward an Equalitarian Legal Order, 1930-1950," in *The Annals of the American Academy of Political and Social Science,* May 1973. Judge Hastie began his article as follows:

> During the decade immediately after the American Civil War, the newly enacted Thirteenth, Fourteenth, and Fifteenth Amendments to the Constitution of the United States and implementing federal and state legislation held out to blacks the promise of a dawning era in which the rights and status of the individual and his access to the ever increasing opportunities and privileges of American life would not be demeaned on the basis of race. To the recent slaves and their descendants, even as to immigrants and their descendants, this was to be the land of equality where all could live in dignity, and achievement would not be obstructed by barriers of caste. But less than fifty years later, this lofty promise had been repudiated by national, state, and local government with the sanction of the courts and with the acquiescence of most Americans.[28]

Should Judge Hastie be hereafter disqualified because in this learned article he recognized "[t]hat sordid chapter in American history"[29] where the courts, the national, state

28. Id. at 19.

29. Id.

and local governments failed to assure equal justice under the law? Or would this distinguished jurist and scholar, William H. Hastie, escape disqualification because he is on the Court of Appeals, or because his article was published in a national journal directed to political and social scientists and was not presented primarily to a group of black historians?

Just four weeks ago, Associate Justice Potter Stewart of the United States Supreme Court delivered a most perceptive address at the Yale Law School Sesquicentennial Convocation. He reminisced about his years at the school and noted that from just one "student eating club" in his years there had come ". . . the two members of the Supreme Court who are here today, a United States Senator, three members of the House of Representatives, two governors of Pennsylvania, two secretaries of the Army, an Undersecretary of Defense, a nominee for the Vice Presidency of the United States, a Vice President of the United States, and the incumbent President of the United States." Many of the alumni present at the Sesquicentennial Convocation were like those in Justice Stewart's student eating club—individuals who are now charting the future course of our society in top policy-making positions. Before this group, Justice Stewart applauded the Yale Law School's great tradition "of free inquiry, of independent thought, and of sceptical examination of the very foundations of existing law." He went on to note:

> It is in that tradition that I turn this morning to an injury into an aspect of constitutional law that has only recently begun to engage the attention of the Supreme Court. Specifically, I shall discuss the role of the organized press—of the daily newspapers and other established news media—in the system of government created by our Constitution.

> It was less than a decade ago—during the Vietnam years—that the people of our country began to become aware of the twin phenomena on a national scale of so-called investigative reporting and an adversary press—that is, a press adversary to the Executive Branch of the Federal Government. And only in the two short years that culminated last summer in the resignation of a President did we fully realize the enormous power that an investigative and adversary press can exert.
>
> The public opinion polls that I have seen indicate that some Americans firmly believe that the former Vice President and former President of the United States were hounded out of office by an arrogant and irresponsible press that had outrageously usurped dictatorial power. And it seems clear that many more Americans, while appreciating and even applauding the service performed by the press in exposing official wrongdoing at the highest levels of our national government, are nonetheless deeply disturbed by what they consider to be the illegitimate power of the organized press in the political structure of our society. *It is my thesis this morning that, on the contrary, the established American press in the past ten years, and particularly in the past two years, has performed precisely the function it was intended to perform by those who wrote the First Amendment of our Constitution.* I further submit that this thesis is supported by the relevant decisions of the Supreme Court. (Emphasis added.)[30]

I agree with Justice Stewart's assessment of Yale and also of the First Amendment. But my concurrence on

30. Pp. 2-3.

these points is irrelevant. The significant fact is that one of the Justices of the United States Supreme Court felt that it was appropriate to speak out on the First Amendment as part of a rotation of "free inquiry, of independent thought, and of sceptical examination of the very foundations of existing law." If it was appropriate for him to discuss such sensitive issues as have confronted the nation within the last ten years against a background of the importance of the First Amendment, then what makes it so inappropriate for a black judge to discuss, before black historians, the nation's racial history under the rule of law?

In view of those comments of Justice Stewart, are defendants suggesting that he should thereafter be disqualified from sitting on first amendment cases, or on other matters tangentially related to the area about which he spoke?

At the luncheon where I spoke, I was introduced by the late Judge Raymond Pace Alexander, senior judge of the Court of Common Pleas of Philadelphia county, and the first black to be appointed a judge in that court. Because during most of his professional life Judge Alexander has expressed comments similar to those which Judge Hastie made in the *Annals* article, and because of his long association with this scholarly group, the Association for the Study of Afro-American Life and History,[31] and his

31. On p. 20 of the souvenir journal, Appendix C, Judge Alexander related the history of the Philadelphia chapter of the Association for the Study of Afro-American Life and History. He began as follows:

> "The establishment of the Philadelphia Chapter of the Association for the Study of Negro Life and History (hereinafter, 'ASNLH') brings back to my mind some of the many glorious memories of my now rather long and, I must confess, very active life. I look back and see so many truly wonderful people, so many occasions and events that helped shape my own life. Many lovely people, some of whom are no longer living, marked those days in 1929,

introduction of me at the banquet, should Judge Alexander have been disqualified from ever hearing a case involving racial claims?

One month to the day after he had introduced me before the Association for the Study of Afro-American Life and History, on November 25, 1974 the city and nation suffered the loss of Judge Alexander. The eulogies were endless and, as the *Philadelphia Inquirer* noted in its lead editorial of November 26, 1974, "His Legacy is a Better City":

> "His death at 76 deprives Philadelphia and the nation of an outstanding fighter against racial discrimination who was equally active in promoting good race relations. Judge Alexander believed in brotherhood, and he made true believers of many, black and white, who were privileged to know him."

Judge Alexander's legacy [32] was partially because of the commitment he kept even after he was a judge. De-

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31. (Cont'd.)

> now forty-one years ago, when we were in correspondence with Dr. Carter G. Woodson and finally when he came to Philadelphia to celebrate the opening of our chapter at an elegant and dramatic meeting in our own home. Dr. Woodson's impressive appearance, his dignified and genteel manner, his culture and eloquence, all interwoven with sincere warmth and simplicity, made it very easy for everyone present to feel his earnestness in the cause of the study of the Black American to which he had devoted his life and to feel entirely 'at home' in his presence."

He noted his service as president of the organization from 1929 to 1933 and his participation in the Association throughout the years. Upon his death Judge Alexander was still active and was an ex officio member of the Executive Council, "having voice and vote." See p. 3 of Appendix B.

32. For a description of Judge Alexander's experiences at the Bar, see Alexander, *Blacks and the Law*, 43 N. Y. S. B. J. 15 (1971), reprinted in 43 Pa. B. Ass'n Q. 61 (1971).

fendants would probably have been the first to applaud that legacy when it was noted on the obituary page. They might even have sent a card of condolence to the family. But they seem to be oblivious to the fact that this legacy was earned by Judge Alexander's participation in the great events of his lifetime, including his frequent speeches to the Association for the Study of Afro-American Life and History.

One of the many gratifying aspects of Chief Justice Burger's leadership of the federal judicial system has been his intense awareness of the inadequacy of the criminal justice system, particularly as it pertains to corrections, prisons, and jails.

In his penetrating address on the criminal justice system on November 16, 1972, to the National Conference of Christians and Jews, he captioned his speech "Our Options are Limited." He stated:

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32. (Cont'd.)

At an earlier date, in 1941, before he became a judge, Judge Alexander analyzed the plight of black lawyers within his own profession and argued the necessity of a black bar association as follows:

> "Just so long as we are compelled to recognize racial attitudes in America, and the positive refusal to admit the Negro lawyer to membership in the Bar Association of the South or even to permit them to use the libraries, just so long as the Negro lawyer is restricted in his membership in local Bar Associations in the North, and particularly, so long as the American Bar Association for all practical purposes refuses to admit Negroes to membership, then so long must there be an organization such as the National Bar Association. Certainly all of us shall welcome the day when racial animosities and class lines shall be so obliterated that separate Bar Associations, other separate professional associations as well as separate schools will be anachronisms."
>
> Alexander, "The National Bar Association—Its Aims and Purposes," 1 Nat'l B. J. 2 (1941). See also "Reflections," 1 BALSA Reports 8 (1973) (reprint of excerpts from Judge Alexander's speech).

Yet with all this development of the step-by-step details in the criminal adversary process, we continue, at the termination of that process, to brush under the rug the problems of those who are found guilty and subject to criminal sentence. In a very immature way, we seem to want to remove the problem from public consciousness.

* * *

There are, it seems to me, perhaps only two other alternatives.

The first is the obvious one to improve the institutions, the facilities and the programs that are connected with confinement of convicted persons. The second is to develop better means and processes to identify those convicted persons who should not be sent to prisons, but should be released under close supervision. To do this, however, we must expand our supervisory processes and provide intensive training for the men and women in the probation and parole services. Judges and penologists despair over their inability to provide the close supervision that has been found to be one of the most useful devices in the correctional process.

* * *

It should not surprise us, therefore, when a young man from a dismal environment in the first place is found guilty and sentenced for two, three or five years in such an institution, *he leaves it a worse, not a better, human being.*[33]

Because Chief Justice Burger has taken such a leadership role in bringing enlightenment to our failures in our

33. Pp. 4-5, 6-7, 8 (emphasis added).

correctional institutions, should he be disqualified from adjudicating cases where some wardens or Parole boards feel that the correctional system has not been faulty, at least in a specific case where a prisoner is asking for relief?[34]

VIII.

THE RELEVANCE OF DISSENTING OPINIONS:

> ". . . an appeal to the brooding spirit of the law, to the intelligence of a future day."[34A]

Was it inappropriate for me to suggest that my audience pursue remedies for inequality in forums other than the Supreme Court? How are the interests of defendants disparaged or hurt when a group of historians or blacks are told they cannot rely on the Supreme Court alone in their pursuit of equality? Such an argument would, if anything, aid defendants rather than prejudice them for it recognizes the limited powers of the judiciary as an instrumentality to eradicate some aspects of racial injustice.

Moreover, this view of the limited extent to which blacks can rely on the Court is not original with me. Justice Thurgood Marshall, in the *Bradley* case,[35] was joined in his dissent by Justices Douglas, Brennan and White. He said:

> After twenty years of small, often difficult steps towards that great end—[a living truth of our constitutional ideal of equal justice under the law] the court today takes a giant step backwards . . . the court's answer is to provide no remedy at all for the violation proved in this case thereby guar-

34. See Morrissey v. Brewer, 408 U. S. 471, 92 S. Ct. 2593 (1972).

34A. C. Hughes, *The Supreme Court of the United States*, 67-68 (1928).

35. *Milliken v. Bradley*, — U. S. —, —, 94 S. Ct. 3112, 3145 (1974).

> anteeing that Negro children in Detroit will receive the same separate and inherently unequal education in the future as they have been unconstitutionally afforded in the past. . . . Those children who have been denied that right in the past deserve better than to see fences thrown up to deny them that right in the future. Our nation, I fear, will be ill-served by the Court's refusal to remedy separate and unequal education, for unless our children begin to learn together, there is little hope that our people will ever learn to live together.[36]

Defendants cannot seriously contend that it is improper to quote with approval the dissenting opinions of Supreme Court Justices. Time and again, in rejecting legal conclusions that appeared obvious to a majority of their contemporaries on the Court, dissenting Justices have shown themselves to be true prophets, predicting with uncanny accuracy the course the law would eventually take. Mr. Chief Justice Hughes phrased it well:

> "A dissent in a court of last resort is an appeal to the brooding spirit of the law, to *the intelligence of a future day,* when a later decision may possibly correct the error in which the dissenting judge believes the court to have been betrayed."[37] (emphasis added)

The history of the Supreme Court is studded with examples of the prescience of dissenting Justices.

In *Lochner v. New York,* 198 U. S. 45, 25 S. Ct. 539 (1905), the Supreme Court struck down on due process grounds a statute prohibiting bakery workers from toiling for more than sixty hours a week. Mr. Justice Holmes, in

36. Id. at 3145-46.

37. C. Hughes, *The Supreme Court of the United States,* 67-68 (1928).

a classic dissent, pointed out that "[t]he Fourteenth Amendment does not enact Mr. Herbert Spencer's Social Statics," and that "[the] constitution is not intended to embody a particular economic theory."[38] Thirty-two years later Justice Holmes was vindicated when the *Lochner* doctrine was finally discarded in *West Coast Hotel Co. v. Parrish,* 300 U. S. 379, 57 S. Ct. 578 (1937). In *Hammer v. Dagenhart,* 247 U. S. 251, 38 S. Ct. 529 (1918), the court struck down a Congressional statute prohibiting the shipment in interstate commerce of goods produced by child labor. Again, Mr. Justice Holmes dissented, and again his view eventually became the law, this time in *United States v. Darby,* 312 U. S. 100, 61 S. Ct. 451 (1941), which expressly overruled *Hammer v. Dagenhart, supra.*

In First Amendment cases, Mr. Justice Brandeis joined Mr. Justice Holmes to form an immortal tandem of dissenters. Theirs was the minority view in *Abrams v. United States,* 250 U. S. 616, 40 S. Ct. 17 (1919), and *Gitlow v. New York,* 268 U. S. 652, 45 S. Ct. 625 (1925). Not long afterwards, however, the values they had championed were endorsed by the Court in *Near v. Minnesota,* 283 U. S. 697, 51 S. Ct. 625 (1931), in *Herndon v. Lowry,* 301 U. S. 242, 57 S. Ct. 732 (1937), in *Palko v. Connecticut,* 302 U. S. 319, 58 S. Ct. 149 (1937), and in *Lovell v. Griffin,* 303 U. S. 444, 58 S. Ct. 666 (1938).

Both men were in the minority again in *Olmstead v. United States,* 277 U. S. 438, 48 S. Ct. 564 (1928), where they voiced their objection to federal invasions of individual privacy through wiretapping. In his dissent, Mr. Justice Brandeis gave classical expression to the philosophical foundation of the Fourth Amendment:

> Decency, security, and liberty alike demand that government officials shall be subjected to the same rules of conduct that are commands to the ordinary

38. Id. at 75, 25 S. Ct. at 546, 547.

> citizen. In a government of laws, existence of the government will be imperiled if it fails to observe the law scrupulously. Our government is the potent, the omnipresent teacher. For good or for ill, it teaches the whole people by its example. Crime is contagious. If the government becomes a lawbreaker, it breeds contempt for law; it invites every man to become a law unto himself; it invites anarchy.[39]

This "appeal to the brooding spirit of the law" found an answering echo in *United States v. United States District Court,* 407 U. S. 297, 92 S. Ct. 2125 (1972), where the Supreme Court unanimously rejected the Federal Government's claim that it could conduct warrantless electronic surveillance in matters of domestic security.

The dissenting opinion of Mr. Justice Black in *Adamson v. California,* 332 U. S. 46, 67 S. Ct. 1672 (1947), presaged the expansive view of rights entitled to Fourteenth Amendment protection that was later reflected in landmark criminal procedure decisions like *Mapp v. Ohio,* 367 U. S. 643, 81 S. Ct. 1684 (1961), *Gideon v. Wainwright,* 372 U. S. 335, 83 S. Ct. 792 (1963), *Escobedo v. Illinois,* 378 U. S. 478, 84 S. Ct. 1758 (1964), and *Miranda v. Arizona,* 384 U. S. 436, 86 S. Ct. 1602 (1966). Finally, the first Mr. Justice Harlan stood alone in *Plessy v. Ferguson,* 163 U. S. 537, 16 S. Ct. 1138 (1896), when he said that

> ". . . in view of the Constitution, in the eye of the law, there is in this country no superior, dominant, ruling class of citizens. There is no caste here. Our Constitution is color-blind, and neither knows nor tolerates classes among citizens. In respect of civil rights, all citizens are equal before the law.

39. Id. at 485, 48 S. Ct. at 575.

> The humblest is the peer of the most powerful. The law regards man as man, and takes no account of his surroundings or of his color when his civil rights as guaranteed by the supreme law of the land are involved."[40]

Fifty-eight years later, in *Brown v. Board of Education*, 347 U. S. 483, 74 S. Ct. 686 (1954), the Supreme Court unanimously adopted the message of Mr. Harlan's dissent that the states cannot impose racial segregation.[41]

Surely, then, there was no impropriety in my reliance, in a public forum, on Mr. Justice Marshall's appeal to "the intelligence of a future day," his dissent in *Milliken v. Bradley, supra*, unless defendants believe that a Supreme Court Justice may make such an appeal, but a District Court Judge may not. Or do defendants believe that all opinions of the majority during the October, 1973 Supreme Court term are eternal verities and that it is heresy to hereafter quote one of the dissenting Justices?

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40. Id. at 559, 16 S. Ct. at 1146.

41. While he did not cite Justice Harlan's dissenting opinion, nevertheless, when a state judge and chancellor in *Belton v. Gebhart*, 87 A. 2d 862 (Del. 1952), Chief Judge Seitz adopted as his own personal belief the rationale which Justice Harln had expressed in his dissent in *Plessy v. Ferguson*. *Belton, supra*, later become one of the four companion cases in *Brown v. Board of Education*, see 347 U. S. 483, 486, 494 nn. 1 and 10. As chancellor, Judge Seitz wrote:

> ". . . In other words, by implication, the Supreme Court of the United States has said a separate but equal test can be applied, at least below the college level. This Court does not believe such an implication is justified under the evidence. Nevertheless, I do not believe a lower court can reject a principle of United States Constitutional law which has been adopted by fair implication by the highest court of the land. *I believe the 'separate but equal' doctrine in education should be rejected*, but I also believe its rejection must come from that Court." 87 A. 2d at 865 (emphasis added)

Thus, in 1952, by reason of his definitive statement that he believed the "separate but equal" doctrine in education should be rejected,

IX.

THE OLD AND NEW ORDER OF THINGS.

If, for the reasons previously discussed, defendants' motions are meritless, and since the motions are presumably filed in good faith, what other rationale could explain why defendants so vehemently assert their claim that I be disqualified in the instant case? Perhaps, among some whites, there is an inherent disquietude when they see that occasionally black are adjudicating matters pertaining to race relations, and perhaps that anxiety can be eliminated only by having no black judges sit on such matters or, if one cannot escape a black judge, then by having the latter bend over backwards to the detriment of black litigants and black citizens and thus assure that brand of "impartiality" which some whites think they deserve.

Since 1844, when Macon B. Allen became the first black lawyer to be admitted to the bar of any state,[42] and since John S. Rock[43] was admitted to the bar of the United States Supreme Court on February 1, 1865, black lawyers have litigated in the federal courts almost exclusively before white judges, yet they have not urged that white judges should be disqualified on matters of race relations. In fact, in the "good old days" before William H. Hastie was appointed in 1949 to the United States Court of Appeals for the Third Circuit, white litigants throughout America were able to argue before a judiciary from the United States District Courts to the Courts of Appeals to the United

41. (Cont'd.)
Judge Seitz's comment might be the equivalent of Justice Harlan's classic dissenting opinion, and of course that belief was no basis for disqualifying him to decide the case on its merits.

42. Walter J. Leonard, "The Development of the Black Bar", 407 ANNALS 134, 136 (1973).

43. Fitzhugh Lee Styles, Negroes and the Law 14 (1937).

States Supreme Court without encountering a single black judge along the entire judicial route; for until Judge Hastie's appointment there were no black judges.[44] In fact, until 1961, white litigants in the United States District Courts never had to ponder the subtle issue which defendants now raise, because no President had ever appointed a black as a United States District Judge. If blacks could accept the fact of their manifest absence from the federal judicial process for almost two centuries, the plain truth is that white litigants are now going to have to accept the new day where the judiciary will not be entirely white and where some black judges will adjudicate cases involving race relations.

Interestingly enough, in my almost eleven years on this court, Abraham Freedman and his law firm, Freedman, Borowsky and Lorry, representing claimants and members of the National Maritime Union and the International Longshoremen's Union have appeared before me on hundreds of occasions. Often they were representing black

44. Judges in the United States District Courts, Courts of Appeal and Supreme Court are appointed pursuant to Article III of the United States Constitution. They are nominated by the President and approved by the Senate and have lifetime tenure. See generally, Charles Allen Wright, Law of Federal Courts, Chapter I (1970). Before Judge Hastie's appointment to the United States Court of Appeals, a few blacks had been appointed to the federal bench as territorial judges as in the Virgin Islands, or as judges in the local courts of Washington, D. C. In fact, on his appointment in 1937, to the territorial court in the Virgin Islands, Judge Hastie was the first black to have ever been appointed as a territorial judge. For a more detailed analysis, see the unpublished monograph of Charisse Lillie, "The Careers of the Black Lawyers Who Have Become Federal Judges (May 1973) (on file at Wesleyan University, Department of Government); Report on Black Lawyers and Judges in the United States, 1960-1970, by Edward V. Toles, Congressional Record E-7996, September 2, 1970; and The Black Judge in America: A Statistical Profile, a special society report, American Judicature Society, Vol. 57, p. 18. See also the forthcoming book of Professor Gilbert Ware of Drexel University, Voices from the Black Bench, to be published in 1974.

seamen and black longshoremen. In the process, they have obtained verdicts and settlements before me in behalf of blacks which cumulatively involve millions of dollars for the litigants and millions of dollars in fees for their law firm. The rationale on which they now proceed, if valid, would constitute a basis for disqualifying me and every other black judge in the nation who sits on any of the maritime cases which they litigate here and nationally, because these cases frequently turn on a contested issue of credibility between the allegations of negligence or unseaworthiness by the black seaman or longshoreman and the contrary allegations of the stevedore or maritime officer (who most often are white). Why should black judges be qualified to sit when defendants' present counsel are collecting millions of dollars in legal fees from black seamen and longshoremen, but become instantly disqualified to sit when a predominantly white union represented by the same law firm is charged with racial discrimination?

There is even a more subtle aspect to defendants' argument. It would appear to stem from their possibly subconscious expectations of a black judge's image. They seem highly agitated by the fact that a black judge, with some knowledge of the history of his people, has received sufficient recognition to be invited to speak to a group of black historians. They contend that for him to accept the invitation is to breach his impartiality. Thus, in effect, they are arguing that a black judge cannot convince some whites that he possesses the requisite impartiality unless he shuns associations of black scholars, and, *a fortiori*, never speaks to them. Thus by the subtle tone of their objection, they demonstrate either that they want black judges to be robots who are totally isolated from their racial heritage and unconcerned about it, or, more probably, that the impartiality of a black judge can be assured only if he disavows, or does

not discuss, the legitimacy of blacks' aspirations to full first class citizenship in their own native land. Again, in the good old days, it was possible to find a retinue of colored leaders who by their speeches, their actions, and their public declarations assured whites, and more specifically the white power structure, that the colored man would not rock the boat on what whites perceived to be their sea of racial tranquility.

Though a complex man who made many notable contributions to the advancement of black people, Booker T. Washington[45] symbolized the "we won't rock the boat" attitude in his famous Atlanta speech, where he said:

> "*It is at the bottom of life we must begin, and not at the top.* Nor should we permit our grievances to overshadow our opportunities. . . .
>
> "While doing this, we can be sure in the future, as in the past, that you and your families will be surrounded by the most patient, faithful, law-abiding, and unresentful people that the world has seen. As we have proved our loyalty to you in the past, in nursing your children, watching by the sick bed of your mothers and fathers, and often following them with tear-dimmed eyes to their graves, so in

45. In no way am I here attempting to denigrate Booker T. Washington. Perhaps for his time, considering the magnitude of the opposition he faced, "moderation" was the only alternative. But see the writings of W. E. Burghardt DuBois, The Souls of Black Folk (1903). See also John Hope Franklin's perceptive analysis of DuBois and Booker T. Washington in his introduction to Three Negro Classics (Discus Ed. 1970): "W. E. B. DuBois recognized [Booker T. Washington's] strength but seriously questioned his wisdom and even his integrity. Perhaps the thing that disturbed DuBois most was what he later called 'the Tuskegee Machine,' manifested in the power that Washington enjoyed in determining the future course of Negroes in general as well as the careers of individual Negroes." Id. at xi. Dr. Franklin had earlier pointed out that "William Monroe Trotter, fiery editor of the *Boston Guardian*, regarded Washington as a traitor to his race."

> the future, *in our humble way,* we shall stand by you with a devotion that no foreigner can approach, ready to lay down our lives, if need be, in defense of yours, interlacing our industrial, commercial, civil, and religious life with yours in a way that shall make the interests of both races one. In all things that are purely social *we can be as separate as the fingers,* yet one as the hand in all things essential to mutual progress." [46]

When Washington said "[i]n all things that are purely social, we can be as separate as the fingers," he defined as "social" some areas which are now classically considered civil rights. Because of the priorities he deemed essential, Washington seemed to imply that blacks would not vigorously oppose state-imposed segregation, or their exclusion from some public accommodations, and that they would not protest against state-imposed racial segregation in public schools. Some thought that Washington may even have meant that blacks would not strongly protest their disenfranchisement in the political arena.[46a] The classic analysis of Booker T. Washington has been given by Louis R. Harlan, who noted:

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46. Louis R. Harlan, ed. *The Booker T. Washington Papers, Vol. 1, The Autobiographical Writings,* 74-75 (1972) (emphasis added).

46a. In that same Atlanta speech, Washington said, "It is important and right that all privileges of the law be ours, but it is vastly more important that we be prepared for the exercise of those privileges. The opportunity to earn a dollar in a factory just now is worth infinitely more than the opportunity to spend a dollar in an opera house." Id. at 76. Many have construed the reference to the opera house by Washington as an effort to allay the fears of some that blacks were insisting upon integration in some public accommodations. As to the question of disenfranchisement, see L. Harlan, *Booker T. Washington, The Making of a Black Leader, 1856-1901,* Chapter 15, "Dark Clouds and Silver Linings" (1972).

> "The right to vote was symbolic of the new life of black people during Reconstruction. The denial of the vote on account of race and the deepening of segregation became the central symbolic acts of a white counter-revolution that followed Reconstruction. Booker T. Washington in his Atlanta Compromise address, and in many actions that preceded and followed it, denied the centrality of disfranchisement and segregation, and emphasized economic advancement and self-help as the route through the wilderness to the black man's promised land. In state after state, year after year, disfranchisement of black voters by formal action marched across the South. In the quarter-century after Mississippi began the movement in 1890, every former Confederate state officially disfranchised black voters by a variety of devices that the federal courts and Congress permitted despite the Reconstruction amendments. Disfranchisement repeatedly appeared as a public issue testing Washington's leadership and sense of direction as a black Moses. The way he responded publicly confirmed and deepened his role, not as a total accommodator who made his peace with injustice, but as a conservative who would seek for himself and his people what he wanted, but would take what he could get." [47]

There is, however, a new generation of blacks in the 1970's who do not accept Booker T. Washington's analysis that "[i]t is at the bottom of life we must begin . . ." as the model for the conduct of blacks in this decade. For they know that despite his deference, despite his care not

47. Louis R. Harlan, *Booker T. Washington, The Making of a Black Leader*, 1856-1901, 288 (1972).

to offend the then hostile white political structure, he could not mollify those who insisted that blacks accept second class citizenship. On the contrary, such acquiescence was interpreted to mean that blacks were content with being three-fifths of a man.[47a] Further, blacks are aware of the sequel to Booker T. Washington's deference. For when he informally had lunch with President Theodore Roosevelt, Loren Miller has noted that:

> "The *Memphis Scimitar* said, 'The most damnable outrage which has ever been perpetrated by any citizen of the United States was committed yesterday by the President, when he invited a nigger to dine with him at the White House.' Senator Benjamin Tillman of South Carolina said, 'Now that Roosevelt has eaten with that nigger Washington, we shall have to kill a thousand niggers to get them back to their places.' Georgia's governor was sure that 'no Southerners can respect any white man who would eat with a Negro.'
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> • • •
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> The ultimate obscenity was sponsored by Governor James K. Vardaman of Mississippi, in his newspaper: 'It is said that men follow the bent of their geniuses, and that prenatal influences are often potent in shaping thoughts and ideas in after life. Probably old lady Roosevelt, during the period of gestation, was frightened by a dog, and that fact

47a. The word "slavery" never appeared in the original Constitution of 1787 and did not appear, even in the amendments, until the Thirteenth Amendment abolished slavery. However, the framers did use the term "three-fifths of all other persons" in Article I, § 3 of the original Constitution as a synonym for slavery. See A. L. Higginbotham, Race and the American Legal Process, unpublished monograph, Chapter V, and D. L. Robinson, *Slavery in the Structure of American Politics,* Chapter V (1971).

> may account for the qualities of the male pup that are so prominent in Teddy. I would not do either an injustice, but am disposed to apologize to the dog for mentioning it.' There was more much more, in the same scurrilous vein by newspapers, officeholders and southern politicians."[48]

X.

THE ROLE OF JUDGES.

Thus, the critical issue is, what conduct by black judges will assure their impartiality? Should they be robots? Should they demean their heritage by asking for less than first class citizenship for other blacks? Should they not tell the truth about past injustices? Of course, there is a dramatic difference between the role which legislators, politicians, and elected officials play in our society, one which is far closer to the cutting edge of policy development and the role which could be tolerated or expected from a federal judge. I willingly accept those limitations; they are inherent in the judicial process. I am aware that Judge Higginbotham is not Senator Higginbotham, or Mayor Higginbotham, or Governor Higginbotham, but I also know that Judge Higginbotham should not have to disparage blacks in order to placate whites who otherwise would be fearful of his impartiality.

Obviously, black judges should not decide legal issues on the basis of race. During my ten years on this court, I have not done so. I have, depending on the facts, sentenced numerous black and white criminal defendants to substantial terms of imprisonment. I have placed other criminal defendants, both black and white, on probation. Depending on the relevant facts, some civil cases have been decided in

48. Loren Miller, *The Petitioners: The Story of the Supreme Court of the United States and the Negro* 206-207 (1966).

favor of and others against black litigants. In this case, plaintiffs similarly will enjoy no advantage because they are black; defendants will not be disadvantaged because some of them are white. The outcome of this case will be dictated by what the evidence shows, not by the race of the litigants.

I am pleased to see that my distinguished colleagues on the bench who are Jewish serve on committees of the Jewish Community Relations Council, on the boards of Jewish publications, and are active in other affairs of the Jewish community. I respect them, for they recognize that the American experience has often been marred by pervasive anti-Semitism. I would think less of them if they felt that they had to repudiate their heritage in order to be impartial judges.

Many Catholic judges have been active in their church, as have been Episcopalian and other Protestant judges. It would be a tragic day for the nation and the judiciary if a myopic vision of the Judge's role should prevail, a vision that required Judges to refrain from participating in their churches, in their non-political community affairs, in their universities. So long as Jewish judges preside over matters where Jewish and Gentile litigants disagree; so long as Protestant judges preside over matters where Protestants and Catholic litigants disagree; so long as white judges preside over matters where white and black litigants disagree, I will preside over matters where black and white litigants disagree. Defendants are patently aware of the variety of extra-judicial activities which has been the accepted standard for judges in this District Court, in this circuit, and in the nation. It is inconceivable, then, that rational lawyers would object to the aforementioned speeches made by Chief Justice Burger and Justice Stewart, or even the speech which Justice Douglas made on Decem-

ber 2, 1974, to the Jewish Community Relations Council of Philadelphia.

I concluded my address to the historians by quoting Langston Hughes' famous poem "Dream of Freedom":

> "There is a dream in the land
> With its back against the wall.
> By muddled names and strange
> Sometimes the dream is called.
>
> There are those who claim
> This dream for theirs alone—
> A sin for which, we know,
> They must atone.
>
> Unless shared in common
> Like sunlight and like air,
> The dream will die for lack
> Of substance anywhere.
>
> The Dream knows no frontier or tongue
> The dream no class or race.
> The dream cannot be kept secure
> In any one locked place.
>
> This dream today embattled,
> With its back against the wall—
> To save the dream for one
> It must be saved for all."

In a nation which had a revolution theoretically based on the declaration that "we hold these truths to be self-evident, that all men are created equal," a judge should not be disqualified if two centuries later he believes that the rhetoric must be made real for all citizens, including blacks, and that the dream must be "saved for all."

CONCLUSION.

In many ways this opinion may appear to be too long and prolix. But if defendants' arguments are asserted in good faith and sincerity, they nevertheless represent an almost subconscious expression of their expectation of the deportment of blacks and, more specifically, of black judges. If America is going to have a total rendezvous with justice so that there can be full equality for blacks, other minorities, and women, it is essential that the "instinct" for double standards be completely exposed and hopefully, through analysis, those elements of irrationality can be ultimately eradicated. It is regrettable that in this case I must take substantial time and effort to answer defendants' meritless allegations, but in some respects the motions merely highlight the duality of burdens which blacks have in public life. Blacks must meet not only the normal obligations which confront their colleagues, but often they must spend extraordinary amounts of time in answering irrational positions and assertions before they can fulfill their primary public responsibilities.

My remarks to the Association for the Study of Afro-American Life and History on October 25, 1974 are the factual foundation for defendants' motions. Those remarks reflected a position similar to the one which that distinguished federal jurist from South Carolina, Judge Waring,[49] once took in behalf of equal racial justice. My

49. Judge Waring wrote the dissenting opinion in the three-judge court which initially heard Briggs v. Elliot, 98 F. Supp. 529, 538 (1951). He noted that in his view *Plessy v. Ferguson* was no longer valid constitutional doctrine and concluded "To me the situation is clear and important, particularly at this time when our national leaders are called upon to show to the world that our democracy means what it says and that it is a true democracy and there is no under-cover suppression of the rights of any of our citizens because of the pigmentation of their skins." Id. at 548. He had earlier said that "if the courts of this land are to render justice under the laws

remarks, like his, showed "at most, zeal for upholding the rights of Negroes under the Constitution and indignation that attempts should be made to deny them their rights. A judge cannot be disqualified merely because he believes in upholding the law, even though he says so with vehemence." *Baskin v. Brown, supra,* at 394.

Of course, I do have feelings that this nation must fulfill its theoretical commitment to equal justice under the law. I do not apologize for these feelings, nor do I apologize for my remarks. Given the same opportunity, I would make those remarks again today. If I had not in fact made them, I would wish that I had.

Defendants' Motions for Disqualification are DENIED.[50]

A. LEON HIGGINBOTHAM, JR.

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49. (Cont'd.)
without fear or favor, justice for all men and all kinds of men, the time to do it is now and the place is in the elementary schools where our future citizens learn their first lesson to respect the dignity of the individual in a democracy." Id.

50. I cannot in good conscience certify this question of law to the Court of Appeals for its judgment pursuant to 28 U. S. C. § 1292(b) (1970). The applicable law clearly permits me to continue to preside over the instant case. I recognize, however, that should defendants deem it appropriate, they may apply to the Court of Appeals for a writ of mandamus or prohibition, and ultimately carry this question to the Supreme Court of the United States if the Court of Appeals does not grant their application. While I am confident that my determination of the disqualification issue is correct, if such writs were pursued I would refrain from further proceedings until there was a definite ruling by the Court of Appeals. Such a delay would be unfortunate, since this case is three years old and probably the oldest triable case on my docket. But because of the personal nature of these motions, I would await appellate determination if such writs were sought.

APPENDIX A TO OPINION.

"RACISM AND THE AMERICAN LEGAL PROCESS: WHERE HAVE WE BEEN AND WHERE ARE WE GOING?"

Address By

THE HONORABLE A. LEON HIGGINBOTHAM, JR.,

Judge, United States District Court for the Eastern District of Pennsylvania

59TH ANNIVERSARY CONVENTION

THE ASSOCIATION FOR THE STUDY OF AFRO-AMERICAN LIFE AND HISTORY, INC.

THE BENJAMIN FRANKLIN HOTEL
PHILADELPHIA, PENNSYLVANIA

FRIDAY, OCTOBER 25, 1974

12:00 NOON

ROUGH DRAFT

"TO THE SCALE AND STANDING OF MEN".

The first Convention of Free Persons of Colour was held in Philadelphia in September, 1830, with Richard Allen presiding. Then, as now, one of the critical issues was whether racial justice could be obtained through the American legal process. In the first paragraph of their resolution, the delegates emphasized their acceptance of the egalitarian concepts of the Declaration of Independence and, most significantly, in the second paragraph they asserted:

> "Viewing these as incontrovertible facts, we have been led to the following conclusion; that our forlorn and deplorable situation earnestly and loudly demands of us to devise and pursue all legal means for the speedy elevation of ourselves and brethren to the *scale and standing of men.*"

Their message of a hundred and forty four years ago is just as relevant today. For we still must assess the legal process and pursue all means for the speedy elevation of ourselves and our brethren to the "scale and standing" of men and women.

We are all profoundly indebted to the significant contributions which this association has made toward the goals expressed one hundred and forty four years ago in Philadelphia, and the battle which thousands have fought, the blood and tears which thousands have shed and the persistent dreams which thousands have pursued.

I am confident that in the annals of history, doctrinal conceptualization and insight most often precede action or implementation. This Association has kept the faith. Faith which has been generated by scholarly analysis. Faith which has been encouraged by strong men and

women who told the harsh truth about the successes and failures of the system. Faith which persisted with many knowing that the price of telling these truths would preclude any popular acceptance and even sometimes deter educational advancement. Faith, because many in this Association were willing to walk virtually alone while the purportedly great history departments at the most famed universities felt that the black experience deserved at most miniscule attention or at worst a denigrating Sambo, Steppin Fetchit conceptualization. This Association was preceded by giants in human history such as Frederick Douglass, a name in American history which should be placed beside those of Thomas Jefferson and Abraham Lincoln, and an analysis of the treatment of Douglass is illustrative of the unconcern which many purportedly major historians had about the plight of the black man. As Professor Philip Foner points out:

> "James Ford Rhodes' History of the United States devotes seven volumes to the period 1850-1870. Yet Rhodes leaves even the careful student with the impression that Douglass was just another of the many minor figures with which this exhaustive work is filled. John B. McMaster treats Douglass even more casually in the ten volumes of his History of the People of the United States, referring to him only once briefly and then not even taking the trouble to spell his name correctly. Edward Channings six volumes had little room for mention and none for interpretation of Douglass' role. Professor Dwight L. Dumond of the University of Michigan, in his book, *The Anti-Slavery Origins of the Civil War*, finds space to present obscure white Abolitionists like Augustus

> Wattles and Calvin Waterbury, but Douglass is not so much as mentioned." *

At this hour the persistent question is, will we keep the faith, just as they died laboring for it. One way we can pay our duty to the legacy of history is that we continue to present, now more than ever before, the critical historic facts of the black experience. The message must be told in the nurseries, and in the home for the aged, in the Harvards and the Talladegas, to the white and the black and all shades in between.

One facet of our duty is the emphasizing again and again and again of the relationship between racism and the American legal process; to explain how the legal process has functioned at its shabbiest hours in a manipulative fashion to foster racial deprivation, and how at its better hours it dealt more honestly with the deprivations which the rule of law had sanctioned. This is our mission; this must be our daily faith. I am equally confident that our future will be partially determined by our continued capacity to carry forth the great tradition of the Richard Allens, the Frederick Douglasses, the Carter Woodsons, the W. E. B. duBoises, the Charles Houstens, and the Martin Luther Kings.

At this very hour it is still crucial that we continuously present the critical historical facts of the black experience to the centers of power and policy making. Part of our effort must be to emphasize again and again the relationship between racism and the American legal process, and to explain how the legal process has been, and is, so often manipulated to foster racial deprivation for blacks.

So often, when it comes to race and the American legal process many Americans accept the folly of the lines from

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* Philip S. Foner, The Life and Writings of Frederick Douglass, Vol. 1, New York; International Publishers (1950), p. 11.

Gilbert and Sullivan. As you may recall, the Lord Chancellor said:

> "The Law is the true embodiment of everything that's excellent. It has no kind of fault or flaw, and I, my Lords, embody the Law."*

Let us look at one recent case as an example of the faults or flaws which so often exist in the judicial process. For this analysis, let us choose not a purported redneck, not one who was elected to office on a racist platform, not a Southerner, not an "unlearned" man, but instead a man who was born in the state of Washington, who was educated at the University of Washington, who rose through the judicial ranks from Judge of the Police Court, to the Superior Court, and finally became Chief Justice of the Supreme Court for the state of Washington. I refer to Chief Justice Frank Hale, who wrote a dissenting opinion in the recent University of Washington Law School case, *De Funis v. Odegaard*,* which challenged the University of Washington's Law School admission policy. The law school's policy was designed "to increase participation within the legal profession by persons from racial and ethnic groups [black Americans, Chicano Americans, American Indians, and Phillipine Americans] which have been historically denied access to the profession and which consequently are grossly under-represented within the legal system." I presume that, to this audience, I need not argue about the utter necessity of affirmative action policies to increase blacks in our professional schools and particularly in the legal profession. But when the case was before the Supreme Court of the state of Washington, Chief Justice Frank Hale wrote an extensive dissenting opinion and said

* *Iolanthe*, Act 1.
* 82 Wash. 2nd 11 (1973).

he doubted whether "prior racial discrimination . . . existed" in the legal profession. While reasonable persons might disagree as to the merits of a preferential admissions policy, certainly no person, even one with meager historical information, should doubt that there has been prior racial discrimination directly within the profession and, more important, pervasive discrimination in every facet of society. I imagine that Chief Justice Hale was trained by the history books of the Ulrich Phillips vintage, and thus he symbolizes our need to increasingly make the record clear, not merely to black Americans but, I submit even more important, to white Americans. In the brief time allocated at this luncheon, I would suggest four themes which from my view must receive greater emphasis so that at least future generations will be better informed than their predecessors.

First, let us explore briefly the very beginning.

I.

THE BEGINNING.

My reading of the statutes and cases convinces me that after the first blacks came here in 1619, there were decades when the status of blacks was substantially similar to the status of white indentured servants, and that in a gradual process, often by judicial decree for which there was neither English precedent nor statutory authority, and occasionally by statutes, the status of blacks was dramatically changed in the first fifty to sixty years from a limited indentured servitude to slavery.

As an example, in the *Graweere** case of 1641 before the Council and General Court of Colonial Virginia a Negro servant was granted the right to purchase his child, and the court recognized his right to raise hogs and keep one half of the profits for himself. The cases sprinkled throughout

* *Re Graweere,* McIlwaine 477 (March 1641).

the early 1600's which support manumission and limited terms of indenture are in sharp contrast to those arising 50 or more years later. For in the late 1600's, the southern courts particularly were on a steady course of chipping away the rights which blacks would deserve as human beings in our society. Yet simultaneously the courts and legislatures were reducing the burden which could be imposed on white indentured servants. I have read thousands of cases from this slavery era; the most dramatic fact they reveal is that courts imposed these burdens on blacks often without authority under the common law of England and most often without statutory mandate. The ultimate evolution of the doctrine of total oppression of blacks was most precisely articulated by Judge Thomas Ruffin of the North Carolina Supreme Court, for he was a learned man, who had been educated at Princeton and a religious man whose father was an Episcopal priest. In *State v. Mann** in 1829 the court was presented with the simple issue of whether it was a crime for the hirer of a slave to shoot the slave without provocation. Judge Ruffin made it clear that he would not permit the moral issue to creep into his adjudication. Counsel for the Attorney General had argued that the limitations of force which a parent could put on a child, a master on an apprentice, or a teacher on a pupil should be analogous authority for some restraint on the power of a master or his agent to physically abuse a slave. Ruffin rejected those views because, as he said:

> "There is no likeness between the cases. They are in opposition to each other, and there is an impassable gulf between them. The difference is that which exists between freedom and slavery —and a greater cannot be imagined.
>
> * * *

* 13 N. C. 263 (1829).

> With slavery it is far otherwise, the end is the profit of the Master, his security and the public safety; the subject, one doomed in his own person, and his posterity, to live without knowledge, and without the capacity to make anything his own, and to toil that another may reap the fruits. What moral considerations shall be addressed to such a being, to convince him what, it is impossible but that the most stupid must feel and know can never be true—that he is thus to labor upon a principle of natural duty, or for the sake of his own personal happiness, such services can only be expected from one who has no will of his own; who surrenders his will in implicit obedience to that of another. Such obedience is the consequence only of uncontrolled authority over the body. There is nothing else which can operate to produce the effect. The power of the master must be absolute, to render the submission of the slave perfect."

The striking fact about Ruffin's opinion is that he did not have to face a difficult issue such as whether slavery should be abolished as Chief Justice Cushing of Massachusetts had confronted that issue with fortitude and wisdom in *Quock Walker* in 1783.* Ruffin merely had to determine whether there were some limits to the physical abuse, short of murder, to which a hirer or master could subject a slave, and Ruffin rejected all principles of restraint. Perhaps the harshness of the American legal process is most dramatically illustrated by comparison of *State v. Mann* with a case which arose on the King's Bench in England before Lord Mansfield four years before our Declaration of Independence.

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* Commonwealth v. Jennison, Proc. Mass. Hist. Soc. 1873-75, 293, April 1783.

II.

THE SOMMERSETT CASE.*

In 1772, in England, a Virginia lawyer, Steuart, was attempting to send his runaway slave, Sommersett, to Jamaica for sale. In behalf of the slave, the abolitionists had filed a writ of habeas corpus arguing that, by English law, slavery was not permitted in England, and thus Sommersett should go free. There was tension and great public interest in the trial, for the abolitionists had made it a *cause celebre.* Hargrave, the barrister for the slave, had argued eloquently as to the destructive consequences of slavery. He relied on the 1529 case of *Cartwright* involving a Russian slave, where the English court said "That England was too pure an Air for Slaves to breathe in", and thus that slave was freed. However, Hargrave knew that the *Cartwright* case was different than the challenge he faced to free Sommersett. Hargrave felt compelled to increase the court's consciousness about the impact of slavery. He asserted a theory which might be relevant to us today. He not only argued that slavery was wrong because of the cruelty it imposes on the slave, he noted the "implacable resentment and hatred (it) . . . excites . . . in the slave". Finally, he emphasized that it corrupts the morals of the master. He concluded: "that slavery, in whatever light we view it, may be deemed a most pernicious institution: immediately so, to the unhappy person who suffers under it; finally so, to the master who triumphs in it, and to the state which allows it." Hargrave's opponents were fast in rebuttal. They were the pragmatists of the day. They argued that slavery must be valid in England because "It is found in three quarters of the globe, and in part of the fourth." They stressed the

* The *Case of James Sommersett, a Negro,* Kings Bench, 12 Geo. III A. D. 1771-72, Lofft; 20 How. St. Tr. 1.

economic consequences of freeing the 14,000 Negroes in England and thus suggested that economics should prevail over liberty, and that morality should be equated with what others did wrong.

Lord Mansfield did not welcome the *Sommersett* case, he had hoped could be settled by the parties privately or by the legislature so that a decision of this magnitude would not have to be made by the court. He emphasized that "setting 14,000 or 15,000 men at once loose by a solemn opinion, is very disagreeable in the effects it threatens. . . . (but) . . . If the parties will have judgment, 'fiat justitia, ruat coelum,' let justice be done whatever be the consequence." He concluded his opinion by holding "the black must be discharged."* Thus, with the stroke of Mansfield's pen, Sommersett was freed from slavery.

While historians will debate endlessly whether Mansfield was abolishing slavery throughout England, or, as I believe, the actual holding of the case was merely the freeing of one slave who was about to be deported by his master, there was nevertheless a profound message to us in Mansfield's opinion when he asserted "'fiat justitia, ruat coelum", which literally means "let justice be done though the heavens may fall", or, as he interpreted it, "let justice be done whatever be the consequence."

In freeing Sommersett, Mansfield was confronted with significant precedent and arguments to the contrary. He had an option in the *Sommersett* case, as judges often had in common law cases, just as administrators today gener-

* Mansfield also said: "The state of slavery is of such a nature, that it is incapable of being introduced on any reasons, moral or political, but only by positive law, which preserves its force long after the reasons, occasion, and time itself from whence it was created, is erased from memory. It is so odious, that nothing can be suffered to support it, but positive law. Whatever inconveniences, therefore, may follow from the decision, I cannot say this case is allowed or approved by the law of England; . . .

ally have, to exercise some discretion to move forward the frontiers of racial justice or to retard their advance.

What is the significance to us of Lord Mansfield's pronouncement in 1772? It is simply that he was willing to take a bold step forward and in the process his action and his opinion became a milestone which Professor Coupland asserted was the moral judgment which marked the "beginning of the end of slavery throughout the British empire."

A comparison of Lord Mansfield's decision in the *Sommersett* case and the position which the signers of the Declaration of Independence took on slavery reveals the persistent frustration which confronts blacks and other minorities in that the advancement of the minority cause will often be subordinated to and compromised for what constantly is supposed to be the greater good of all.

Benjamin Franklin, referring to the *Sommersett* case, condemned ". . . the hyprocrisy of this country which encourages such a detestable commerce [the international slave trade] while it piped itself on its virtue, love of liberty, and the equality of its courts in setting free a single Negro . . .". Yet, though he disparaged the British on the *Sommersett* case, four years later in 1776, Franklin refrained from condemning the international slave trade in the Declaration of Independence because he did not want to slight the representatives from Georgia and South Carolina. For Franklin, establishment of the union was a higher priority.*

Abigail Adams understood the hypocrisy of arguing for freedom from England while sanctioning slavery at home, for she wrote to her husband in Philadelphia that:

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* Of course, I am not unaware of Benjamin Franklin's posture as an abolitionist in Pennsylvania.

> "I wish most sincerely there was not a slave in Providence. It always appeared a most iniquitous scheme to me—to fight ourselves for what we are daily robbing and plundering from those who have as good a right to freedom as we have. You know my mind upon this subject."

III.

THE DEMISE OF THE THIRTEENTH, FOURTEENTH, AND FIFTEENTH AMENDMENTS.

To solve twentieth century problems there may be some in this audience who will not find persuasive either a black abolitionist or an English judge. They might think that references to slavery are irrelevant. They might ask, Why doesn't he look at the operation of the rule of law after the Thirteenth, Fourteenth, and Fifteenth Amendments to the Constitution had been passed? True, those amendments were designed to eradicate slavery and, in the words of Charles Sumner—the conscience of the U. S. Senate—were designed so "that hereafter in all of our legislation, there shall be no such words as 'black' or 'white', but that one shall speak only of citizens."

From my reading of the history of the Thirteenth, Fourteenth, and Fifteenth Amendments and the related Civil Rights Acts, it is clear that the framers of those amendments and the authors of the related statutes concurred with Charles Sumner's hope. They believed that with the enactments, as Loren Miller has said:

> "The long sickness had come to end; now the majestic rhetoric of the Declaration of Independence had full meaning: '*All* men are created equal (and) are endowed by their Creator with certain

> unalienable rights, that among these are Life, *Liberty* and the pursuit of happiness.' The 'Government . . . instituted among men' in the United States of America was committed to 'secure these rights' and to safeguard them against the aggressions of individuals, of the states, and of their agents and servants. By constitutional fiat and statutory direction, the national writ would run to guarantee privileges and immunities, due process, and equal protection of the laws for every man, white and black. In spirit, 'in all of our legislation,' there was 'no such word as black or white . . . only . . . citizens.'" *

Tragically, by the 1880s it was apparent that the "original understanding" of these amendments was being steadily emasculated by a hostile Supreme Court. The judicial and executive abdication had caused Frederick Douglass, in 1889, to wonder whether

> "American justice, American liberty, American civilization, American law, and American Christianity could be made to include and protect alike and forever all American citizens in the rights which have been guaranteed to them by the organic and fundamental laws of the land."

The last rung of hope for blacks dropped out in *Plessy v. Ferguson* ** with the federal birth of the separate but (un)equal doctrine in 1896. There, the U. S. Supreme Court upheld the right of a state to pass a statute providing for separate railway carriages for the white and colored races. In the opinion, they gave implied approval of the

* Loren Miller, the Petitioners (New York: Pantheon, 1956, pp. 100-101).

** 163 U. S. 537 (1896).

right of a state to legislate separate school and other facilities for blacks and whites, saying:

> ". . . We think the enforced separation of the races . . . neither abridges the privileges or immunities of the colored man, deprives him of his property without due process of law, nor denies him the equal protection of the laws, within the meaning of the Fourteenth Amendment. . . ."

In an eloquent dissent, Justice John M. Harlan said:

> ". . . (I)n view of the Constitution, in the eye of the law, there is in this country no superior, dominant, ruling class of citizens. There is no caste here. Our Constitution is color-blind, and neither knows nor tolerates classes among citizens. In respect of civil rights, all citizens are equal before the law. The humblest is the peer of the most powerful. The law regards man as man and takes no account of his surroundings or of his color when his civil rights as guaranteed by the supreme law of the land are involved. It is, therefore, to be regretted that high tribunal, the final expositor of the fundamental law of the land, has reached the conclusion that it is competent for a state to regulate the enjoyment by citizens of their civil rights solely upon the basis of race.
>
> In my opinion, the judgment this day rendered will, in time, prove to be quite as pernicious as the decision made by this tribunal in the *Dred Scott* case.

Finally, he concluded:

> "The destinies of the two races, in this country, are indissolubly linked together, and the interests

> of both require that the common government of all shall not permit the seeds of race hate to be planted under the sanction of law."

Think of the type of nation we would now have if in 1896 our leaders had really followed the message of Justice Harlan that ". . . the common government of all shall not permit the seeds of race hate to be planted under the sanction of law."

If this message had been implemented, subtle or blatant racism would not be one of the underlying issues in the current political campaigns. There would be no problems of busing today; nor would there be the extensive racial ghettos now existing in the inner cities of our nation. The striking racial gaps between black and white economic, health, and educational attainment would be either nonexistent or significantly diminished.

After America had sent millions of its sons to fight Hitler and the Axis, the *Plessy* doctrine was constitutionally repudiated in *Brown,* but because of *Plessy* millions of blacks had sustained a level of deprivation which may take generations to overcome. The leadership of Chief Justice Warren in *Brown,* in *Baker v. Carr,* the one man, one vote decision, and in a litany of interrelated cases was, at least for black Americans, and I submit for all Americans, the finest hour of the court. I need not join the debate over whether the Court is now in a decline or is merely maintaining the status quo achieved by past advances. The significance of the *Brown* * case is that Chief Justice Warren cites men like Kenneth Clark, Franklin Frazier, and Gunnar Myrdal, all of whom were profoundly influenced by the writings in your journal and other scholars, black and

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* 347 U. S. 483, 74 S. Ct. 686 (1954).

white, who believed that the racial truth must be told about America. *Brown* symbolizes the crucial interrelationship between doctrinal development, historical analysis, the writing of history, the perceptions of great scholars and the court's ultimate adoption of that view for a better America. Today, I do not see the Court of the 1970's or envision the court of the 1980's as the major instrument for significant change and improvement in the quality of race relations in America. I am not suggesting a reversion back to the era of *Plessy v. Ferguson*, but I do not see a study march forward where the Supreme Court is the major catalyst for obtaining greater social justice for blacks and other Americans. There are some significant recent opinions by the court that deal with the construction of statutes. The message of these recent decisions is that if we are to deal with the problem which Richard Allen spoke of—rising "to the scale and standard of men", we must probably make our major efforts in another forum. As I see it, we must make major efforts in other forums without exclusive reliance on the federal legal process. While certainly we will support the concept of integration wherever feasible and oppose all mechanisms of governmental actions preclude blacks from having a fair option in our society, the strategy today must go beyond the label or the attainment of integration. Integration in itself will not solve many of the major problems in our society, for we will have obtained very little in terms of Richard Allen's dream if we have only unfulfilled promises, unfulfilled hopes, unfulfilled attainments amidst substantial pockets of integrated unemployment, integrated malnutrition, integrated inferior housing and integrated poor educational systems. Title VII is of little value when industry is closing its doors to all new applicants and turning out employees with ten to fifteen years' seniority. The Fourteenth Amendment's equal pro-

tection right is an impotent constitutional tool to better fund grossly inadequate public welfare systems. In *Milliken v. Bradley* * involving Detroit, the Supreme Court virtually closed the door to regional approaches in integration. In recent years, we have relied almost exclusively on federal law as the first approach and most productive tool. In the *Moose Lodge #107 v. Irvis* * case, the Supreme Court, through Mr. Justice Rehnquist's opinion held that the Fourteenth Amendment could not deal with discrimination in a place of public accommodation in Harrisburg, Pennsylvania, but there the discriminatory practice was later eradicated through application of state rather than federal law. So in some ways maybe it will be the laws of the city, the laws of the state, which must be major vehicles of the mechanism for change. Of course we must maximize our efforts in the political arena. Here I am not urging immersion in any one political camp be it Republican or Democrat or Socialist, or whatever other political configurations there might be; it is just that this arena appears to be the crucible for change. My skepticism expressed here is not that merely of a lowly federal trial judge. *These words have been uttered by Justices of the Supreme Court.* For it was Mr. Justice Thurgood Marshall with whom Justice Douglas, Justice Brennan and Justice White joined in his dissent who said: "After 20 years of small, often difficult steps towards that great end—[a living truth of our constitutional ideal of equal justice under the law] the court today takes a giant step backwards . . . the courts answer is to provide no remedy at all for the violation proved in this case thereby guaranteeing that Negro children in Detroit will receive the same separate and inherently unequal edu-

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* 94 S. Ct. 3112 (1974).

* 92 S. Ct. 1905 (1972).

cation in the future as they have been unconstitutionally afforded in the past." Mr. Marshall concluded his opening remarks by saying "those children who have been denied that right in the past deserve better than to see fences thrown up to deny them that right in the future. Our nation, I fear, will be ill-served by the Court's refusal to remedy seperate and unequal education, for unless our children begin to learn together, there is little hope that our people will ever learn to live together." We all know, even by the events of the last week, what extraordinary impact positive leadership in our federal government can have even in another land thousands of miles away. For when the President and his cabinet and some legislators were concerned they were able to overcome the most complex intricacies of international relations and drastically change the internal domestic policies of the Soviet Union so that harassed Russian Jews could leave their homeland to go to Israel. We commend them for that high dedication of purpose and accomplishment. But is it inappropriate to ask, will we get the same type of moral commitment so that blacks can go within their own native land safely from Roxbury to South Boston? Will we have detente solely in Moscow and not in Massachusetts?

In closing, I thank you for your patience in listening to a journeyman lawyer, for lawyers have neither the profundity of historians nor the eloquence of the poets. So I leave with a message which I think states the appropriate theme for us if we are to fulfill Richard Allen's dream of 1830 in that we rise to "the scale and standing of men". Of course you know that I use men in a non-sexist sense today. The theme is the message of Langston Hughes, expressed in a poem he wrote a decade after the *Brown* decision:

"There is a dream in the land
With its back against the wall.
By muddled names and strange
Sometimes the dream is called.

There are those who claim
This dream for theirs alone—
A sin for which, we know,
They must atone.

Unless shared in common
Like sunlight and like air,
The dream will die for lack
Of substance anywhere.

The Dream knows no frontier or tongue
The dream no class or race.
The dream cannot be kept secure
In any one locked place.

This dream today embattled,
With its back against the wall—
To save the dream for one
It must be saved for all."

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Appendix B to Opinion

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The Association for the Study of Afro-American Life and History was:

1. Organized by Carter G. Woodson in Chicago, September 9, 1915, with the participation of George Cleveland Hall, W. B. Hartgrove, J. E. Stamps, and Alexander L. Jackson.
2. Incorporated under the laws of the District of Columbia, October 2, 1915, with Carter G. Woodson, J. E. Moorland, and J. A. Bigham as trustees.

The Association

3. Published the first number of THE JOURNAL OF NEGRO HISTORY, January 1, 1916, and since that date has published this historical magazine regularly each quarter.
4. Originated *Negro American History Week* on February 7, 1926, and has continued the celebration annually.
5. Brought out the *Negro History Bulletin*, October 1, 1937 and is Published Bi-monthly for February/March, April/May, June/July, August/September, October/November, December/January.

PROGRAMS

The Association for the Study of Afro-American Life and History:

1. Promotes historical research and writing.
2. Publishes books on Afro-American life and history.
3. Sponsors the study of black history through schools, colleges, churches, homes, fraternal groups, and clubs.
4. Collects historical manuscripts and materials relating to black people and makes these sources available throughout the world.
5. Seeks harmony between peoples, and acceptance, by interpreting the history of one to the other.
6. Directs the attention of scientific investigators and serious scholars to the neglected field of Black History.
7. Organizes and stimulates the studies by state and local groups, which have done much to change the attitude of communities toward the Afro-American and vice versa.
8. Encourages the training at accredited universities of young men and women in acceptable methods of research in the social sciences, history and other disciplines.
9. Serves as a powerful proponent in the nation of the concept of "I Am Somebody," with whatever training, desire to achieve, and opportunity, I Can Do" so vital for minorities for participation in the American establishment.
10. Operates as the pioneer and accepted—by militants and non-militants alike—as the scholarly organization of the Black Civil Rights movement.
11. Serves through Headquarters Office in Washington and branches in major cities as a focus for scholarship, relevance and planning for improvement in Afro-American living.
12. Cooperates with governmental agencies, foundations, peoples and nations in projects designed to further the study of ethnic history, with particular emphasis on the black heritage and programs for the future.
13. Sponsors an annual convention attended by upwards of 3,000 persons—delegates, representatives, visitors—which is a premier national venture of scholarship, decision and projection in Afro-American life and history.
14. Merits and is recognized by leaders and lay citizens alike for truthfulness in interpretation of research on race, for publications designed to close the information gap about race, and for historical relevance in the United States and abroad.

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Appendix B to Opinion

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of the

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OXFORD UNIVERSITY PRESS
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1975 AFRO-AMERICAN HISTORY WEEK

GENERAL THEME: FULFILLING AMERICA'S PROMISE

DAILY DISCUSSION TOPICS:

Sunday,	February 9	–	THE BICENTENNIAL AND THE AFRO-AMERICAN
Monday,	February 10	–	EMPLOYMENT AND THE BLACK AMERICAN
Tuesday	February 11	–	POLITICS AND POWER: AFRO-AMERICAN LEADERSHIP
Wednesday,	February 12	–	EDUCATION: TODAY AND TOMORROW REQUISITE
Thursday,	February 13	–	BEHAVIOR PATTERNS: AFRO-AMERICAN DILEMMA
Friday,	February 14	–	HOUSING: CITIZEN CHALLENGE
Saturday,	February 15	–	LOCAL HISTORIC SITES AND MONUMENTS
Sunday,	February 16	–	RELIGION – OUR NATION'S HERITAGE

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COMPOSITE ROOM AND SESSION SCHEDULE

Location:	Betsy Ross Room A Mezzanine	Betsy Ross Room B Mezzanine	Commodore Barry Room Mezzanine	Crystal Ballroom Mezzanine	William Penn Room 2nd Floor	Benjamin Franklin Room Mezzanine	Washington Room Mezzanine	Valley Forge Room A Mezzanine	Valley Forge Room B Mezzanine	Poor Richard Room A 2nd Floor	Poor Richard Room B 2nd Floor	Jefferson Room 2nd Floor	Carnival Room 2nd Floor	Campus Terrace Lobby	Independence Room Mezzanine	Misc.
Wednesday October 23 9:00 A.M.														Exhibit Setup		Tour of Pride, Meeting at Lobby
10:00 A.M.							Executive Council									
12:30 P.M.						Luncheon										
2:30 P.M.							Executive Council									
4:00 P.M.															Press Conference	
5:00-7:00 P.M.	Reception													Hospitality Cocktails		
8:00 P.M.																Member United
																AVI Events
Thursday October 24 9:00 A.M.		Program Committee												Registration Exhibits		
9:30 A.M.				National Heritage Conference												
12:00 P.M.						Luncheon										
2:00 P.M.				New Heritage Conference												
5:30 P.M.	U of Pa. Reception															
6:00 P.M.				Opening Session												
10:00 P.M.	Coronation Reception															

COMPOSITE ROOM AND SESSION SCHEDULE (Continued)

Location:	Betsy Ross Room A Mezzanine	Betsy Ross Room B Mezzanine	Commodore Barry Room Mezzanine	Crystal Ballroom Mezzanine	William Penn Room 2nd Floor	Benjamin Franklin Room Mezzanine	Washington Room Mezzanine	Valley Forge Room A Mezzanine	Valley Forge Room B Mezzanine	Poor Richard Room A 2nd Floor	Poor Richard Room B 2nd Floor	Jefferson Room 2nd Floor	Cambridge Room 2nd Floor	Congress Terrace Lobby	Independence Room Mezzanine	Misc.
Friday October 25 8:30 A.M.													Registration Tables			
9:00 A.M.				Second General Session												
10:30 A.M.	Outlaws & Wanderers: Two Views		Black Biography			Equality for Black Women: Civil War & Reconstruction	The Many Face of Slavery	Black Americans Return to Africa	Blacks in Religion	Materials Related to the Black Experience	Black Participation in Am. Rev.	Teaching Black Princes	Afro-American Studies Program			
12:15 P.M.				Third General Session Conventions, Luncheon												
1:45 P.M.	Reflections on Twentieth Century Africa				Black Reconstruction	Interpreting Black History	Editing Historical Papers		Liberation Movement: Females and Males	Geography of Afro America	Lives the Black Church Sees Light and Hopkins	Black Studies & Black Students	Black Studies Directors & Teachers			
3:30 P.M.			Afro/ African American Literature		Radicalism in Latin America	Blacks as Playwrights	Oral History	Industrial & City Slums	Urban Blacks & Politics	Md. Blacks During the Am. Rev.	Conceptions of Black Philosophy & Ideology	Black Americans During the Prog. Era				
6:00 P.M.				Fourth General Session Awards Banquet												
6:00 P.M.	Region 1	Region 2	Region 3		Region 4	Region 5	Region 6	Region 7	Region 8	Region 9	Region 10					
9:00 P.M.				Fifth General Session												

Appendix B to Opinion

COMPOSITE ROOM AND SESSION SCHEDULE (Continued)

Location	Ebony Room Room A Mezzanine	Ebony Room Room B Mezzanine	Commodore Ebony Room Mezzanine	Crystal Ballroom Mezzanine	William Penn Room 2nd Floor	Delaware Franklin Room Mezzanine	Washington Room Mezzanine	Valley Forge Room A Mezzanine	Valley Forge Room B Mezzanine	Penn Ballroom Room A 2nd Floor	Penn Ballroom Room B 2nd Floor	Jefferson Room 2nd Floor	Capitol Room 2nd Floor	Congress Terrace Lobby	Delaware Avenue Mezzanine	Misc.
Sunday October 26 2:30 P.M.														Exhibits & Registration		
9:00 A.M.				York Central Session												
10:30 A.M.			(Presentation of Proposed Charges & Election of Officers)		Phy Ills Secondary Reform Advised	The Role of Black Women in Am. History	Black Nationalism of Africa	Black Film & Women and Any Am. Film	Panel: Methods and Materials for Teaching	Teaching About Elementary School	Economics & Social Plight of Blacks (1890-1910)	Black Education Past and Present		Black Women Educators & Teachers		
1:45 P.M.					Afro-Am Film Law Free Committees	Early Black Heritage	Minority Leaders	Black Pro test in Music and Poetry	Black Women Forced Into Doing Am. Film	Black Father and Home Environment	Blacks in the Media	Democratic Sem				
3:30 P.M.			The Black Experience in America		Panel & Pol Black Pers	Assimilation Blacks	Black Leaders	Blacks in Economic Am Mainstream	Am Presidents & Afro-Americans	Preparation of Teaching About Am. Indian & Eskimo	Forced Labor/Indentured Servitude	The Black Soldier	Black Ethnic Geography			
6:30 P.M.			Seventh Central Service Committee Banquet													
Sunday October 27 10:00 A.M.														Youth Central Service Committee Meeting		

PROGRAM

WEDNESDAY, OCTOBER 23

9:00 a.m. Tour Philadelphia
Historic Landmarks

10:00 a.m. ASALH Executive Council Session
Washington Room
Mezzanine

12:30 Luncheon – Franklin Room – Executive Council

2:30 p.m. ASALH Executive Council Session
Washington Room
Mezzanine

8:00 p.m. MOTHER BETHEL A.M.E. CHURCH, JOINT SESSION, CO-SPONSORED WITH HISTORICAL SOCIETY OF PENNSYLVANIA AND PHILADELPHIA'76, INC.

BLACK PEOPLE IN REVOLUTIONARY AMERICA
Speakers: Benjamin Quarles, Morgan State College
Edgar Allan Toppin, Virginia State College

THURSDAY, OCTOBER 24

9:00 a.m. GARDEN TERRACE
Exhibits
Registration – All Day

9:30 a.m. CRYSTAL BALLROOM

PLANNING SESSION, NATIONAL BICENTENNIAL CONFERENCE ON INVOLVEMENT AND PARTICIPATION OF BLACKS IN THE NATION'S HERITAGE AND HOW THAT HERITAGE AFFECTS THE PRESENT AND FUTURE

Greetings: Edgar Allan Toppin, President

Introduction and Conference Background: J. Rupert Picott, Executive Director

Planning Format and Working Design: Helen G. Edmonds, Conference Chairman

12:00 Luncheon – National Bicentennial Conference
Betsy Ross Room

2:00 p.m. CRYSTAL BALLROOM
NATIONAL BICENTENNIAL BLACK HERITAGE CONFERENCE, CONTINUED

THURSDAY, OCTOBER 24,

5:30 p.m. Betsy Ross Room-Reception: Courtesy, University of Pennsylvania

8:00 p.m. CRYSTAL BALLROOM

OPENING SESSION

Presiding: Edgar Allan Toppin, President, The Association

Greetings: Margaret G. Holloman, President, Philadelphia Branch, The Association for the Study of Afro–American Life and History, Inc.

Arthur Thomas, President, Board Of Education, School District of Philadelphia

Presentation: *The State of the Association*
J. Rupert Picott, Executive Director, ASALH

Address: *Helping America Understand: The Critical Issues*
Dorothy Height, National President, National Council Of Negro Women, Inc.

10:00 p.m. BETSY ROSS ROOM
RECEPTION

FRIDAY MORNING, OCTOBER 25

8:30 a.m. GARDEN TERRACE
Exhibits
Registration – All Day

9:00 a.m. CRYSTAL BALLROOM
Second General Session

Presiding: Edgar Allan Toppin, President

Greetings: Matthew W. Costanzo, Superintendent, School District of Philadelphia

George Washington Williams and the Beginnings of Afro-American Historiography, John Hope Franklin, University of Chicago

FRIDAY, OCTOBER 25, 1974
10:30 a.m., Washington Room
THE MANY FACES OF SLAVERY

Presiding: George Reed, Howard University

"Sambo and the Slave Narratives: A Note on the Sources"
John T. Kneebone, University Of Virginia

"Subsidizing Slaveholders by Compensating Owners for Executed Slaves: North Carolina, 1748-1772"
Marvin L. Kay, University of Toledo
Lorin Lee Cary, University of Toledo

"Black Slavery in the Cherokee Nation"
R. Halliburton, Jr., Northeastern State College

Commentator: Dan Flanagan, University of Virginia

FRIDAY, OCTOBER 25, 1974
10:30 a.m., Poor Richard Room, Parlor A
MATERIALS RELATED TO BLACK EXPERIENCES

Presiding: Donald M. Jacobs, Northeastern University

Panel Discussion on: "Bridging the Information Gap: The Indexing of Material Related to Black Experiences"

Panelists: Ethel Ellis, Catalog Librarian, Founders Library, Howard University
Richard Krafsur, American Film Institute
Dorothy Porter, Director Emeritus, Moorland – Spingarn Research Center, Howard University
James T. Sabin, Senior Editor, Greenwood Press, Westport, Connecticut

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FRIDAY, OCTOBER 25, 1974
10:30 a.m., Poor Richard Room Parlor "B"
BLACK PARTICIPATION IN THE AMERICAN REVOLUTION: A DREAM DEFERRED

Presiding: Kenneth Goode, University of California, Berkeley

"Social Structure and Social Change: An Exploration Into the Failure of the American Revolution to Abolish Slavery"
William M. King, University of Colorado

"South Carolina Blacks During the Revolution and Compensation to Those Blacks Subsequent to the Revolution"
Seldon Smith, Columbia College

"The Black Image in the Mind of Revolutionary America, 1763-1783"
Wilbur McAfee, Southern Illinois University

Commentator: George Nixon, North Carolina Central University, Durham

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FRIDAY, OCTOBER 25, 1974
10:30 a.m., Commodore Barry Room
BLACK BIOGRAPHY

Presiding: Felix James, Southern Illinois University

"The Importance of Biography for the Historian of the Black Experience: A Case Study of Alfred B. Xuma of South Africa"
Richard David Ralston, University of Rochester

"Mary Church Terrell"
Frances Desselle, Howard University

"M.C.B. Mason: A Dark Champion in Dark Days"
Cleo S. Higgins, Bethune–Cookman College

"Eva D. Bowles: A Pioneer in Interracial Work"
Lucille O'Connell, Bridgewater, Massachusetts

Commentator: Elliot Rudwick, Kent State University

FRIDAY, OCTOBER 25, 1974
10:30 a.m., Valley Forge Room, Parlor "A"
BLACK AMERICANS RETURN TO AFRICA

Presiding: Clara Brock, Lincoln University, Pennsylvania

"Toward a White Man's Country: African Repatriation and the American Colonization Society"
Lawrence J. Friedman, Bowling Green State College

"White on Black: A Reaction to the First Black American Muslims in Egypt (1932)"
Joseph T. Gallagher, State University College

"Rabbi Arnold Ford's Back-to' Ethiopia Movement: A Study of Black Emigration, 1930-1935"
William R. Scott, Wellesley College

"Black American Response to the Congo Conversary 1904-1908"
Sylvia M. Jacobs, Howard University

Commentator: S.P. Fullinwider, Arizona State University

FRIDAY, OCTOBER 25, 1974
10:30 a.m., Valley Forge Room, Parlor "B"
BLACK IN RELIGION

Presiding: Jesse Carney Smith, Fisk University

"Presbyterians and the Negro: A Case Study in Changing Attitudes"
James A. Smylie, Union Theological Seminary

"Outsider or Not? The Black Man and the Catholic Church in Nashville, Tennessee"
Reavis L. Mitchell, Middle Tennessee State University

"Zion City, The Kingdom of Heaven and Race"
Philip L. Cook, Western New Mexico University

Commentator: Mary Joe Bratton, East Carolina University

FRIDAY, OCTOBER 25, 1974
10:30 a.m. Carnival Room
AFRO–AMERICAN STUDIES PROGRAM

Presiding: George French, Director of Social Studies,
School District of Philadelphia

Panel Discussion on:
"The Administrator's Role in Improving Afro–American Studies Programs: Problems and Promises"

Panelists: Thomas K. Minter, Superintendent, District 7, School District of Philadelphia
Alva Gault, Department Chairman of Social Studies William Penn High School, Philadelphia
Manuel Hofferman, Social Studies Collaborator, District 7, School District of Philadelphia

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FRIDAY, OCTOBER 25, 1974
10:30 a.m., Jefferson Room
TEACHING BLACK POLITICS

Presiding: Leslie McLemore, Jackson State College

Panel Discussion on:
"Teaching Black Politics: Methodology and Conceptual Approaches"

Panelists: Hanes Walton, Savannah State College
Mack Jones, Atlanta University
Margie Barnett, Princeton University
Ronald Walters, Howard University
Vernon Gray, Morgan State College

FRIDAY, OCTOBER 25, 1974
10:30 a.m., Betsy Ross Room, Parlor
W.E.B. DUBOIS AND CARTER G. WOODSON: TWO VIEWS
Presiding: Calvin Reese, Texas Southern University
"The Return of Dr. DuBois to the NAACP: 1945-46"
Clarence G. Contee, Howard University
"The Black Church: Woodson and DuBois Reconsidered"
Russell, S. Williams, Consultant for Personnel Support Services Synod of Lincoln Trails United Presbyterian Church
"W.E.B. EuBois' Atlanta years: The Human Side"
Dorothy Cowser Yancy, Georgia Institute of Technology, Atlanta Georgia
Commentator August Meier, Kent State University

FRIDAY, OCTOBER 25, 1974
10:30 a.m., Franklin Room
EQUALITY FOR BLACK WOMEN: CIVIL WAR AND RECONSTRUCTION
Presiding: Roberta Sue Alexander, University of Dayton
"Methodists and Baptists on the Issue of Black Equality in New York, 1865-1868"
Ena L. Farley, State University of New York, Brockport
Commentator: Roland McConnell, Morgan State College

FRIDAY, OCTOBER 25, 1974
12:15 p.m., CRYSTAL BALLROOM
Third General Session
Convention Luncheon

Presiding:	Edgar Allan Toppin, President
	I. Ezra Staples, Associate Superintendent for curriculum and Instruction, School District of Philadelphia
Greetings:	Judge Raymond Pace Alexander, Senior Judge, Court of Common Pleas, Philadelphia
Address:	*Racism and American Legal Process: Where Have We Been and Where Are We Going,* Judge A. Leon Higginbotham, Jr., United States District Court, Eastern District of Pennsylvania

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FRIDAY, OCTOBER 25, 1974
1:45 p.m., Washington Room
EDITING HISTORICAL PAPERS
Presiding: Al-Tony Gilmore, Howard University
"W.E.B. DuBois Papers"
Herbert Aptheker, American Institute for Marxist Studies, New York City
"Frederick Douglass Papers:
John Blassingame, Yale University
"Booker T. Washington Papers"
Louis Harlan, University of Maryland

FRIDAY, OCTOBER 25, 1974
1:45 p.m., Poor Richard Room, Parlor B
FILMS

Films: The Black Church
Sam Lighting Hopkins
Narrator: Charles Peavy, University of Houston
"Legacy of the Dream – Martin Luther King"
Narrator: George Evans, Director, Martin Luther King Foundation, New York

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FRIDAY, OCTOBER 25, 1974
1:45 p.m., Valley Forge Room, Parlor B
The Liberation Movement: Females and Males
Presiding: Lionel Barrow, University of Wisconsin
"The Black Feminist Movement"
C.W. Gregory, Coppin State College
"The Leadership and Philosophy of Dr. Martin Luther King"
Joseph Carpenter, University of Wisconsin, Milwaukee
Commentator: Virginia Stamper UNIV. of Wisc.-Milwaukee

FRIDAY, OCTOBER 25, 1974
1:45 p.m., William Penn Room
BLACK RECONSTRUCTION
Melvin Murphy- Elizabeth City State University
"George Washington Murray and the Fight for Political Democracy in South Caroline"
William J. Gaboury, Southern Oregon College
"An American Black Village Movement: Cooperative Land Purchase During Reconstruction"
Edward Magdol, State University College, Brockport
Commentator:Martin S. Goldman, Program Officer for Ethnic and Minority Heritage, American Revolution Bicentennial Commission, Washington, D.C.

FRIDAY, OCTOBER 25, 1974
1:45 p.m., Betsy Ross Room, Parlors A & B
REFLECTIONS ON TWENTIETH CENTURY AFRICA
Presiding: Colin Palmer, Oakland University
"The Works of Julius Nyerere: A Content Analysis"
James A. McCain, State University of New York, Brockport
"The Impact of the Energy Crisis on Black Africa"
Ernest L. Murphy, University of Md., Baltimore County
"Afro-American in Contemporary Africa: Recent Experiences"
Boniface Obichere, University of California, Los Angeles
Commentator: Okonkwo Nwani, Tuskegee Institute

FRIDAY, OCTOBER 25, 1974
1:45 p.m., Jefferson Room
BLACK STUDIES AND BLACK STUDENTS
Presiding: Nick Aaron Ford, Morgan State College
"Blacks at Harvard"
Ewart Guinier, Harvard University
"The Status of Black Studies, 1974: An Assessment"
Russell Adams, Howard University
Commentator: Alex Willingham, Atlanta University

FRIDAY, OCTOBER 25, 1974
1:45 p.m., Franklin Room
INTERPRETING BLACK HISTORY
Presiding: John Mering, University of Arizona
"Black Spirituals: A Theological Interpretation"
James H. Cone, Union Theological Seminary
"A Critique of Alistair Cooke's "Reconstruction"
Clarice T. Campbell, Rust College
"Black Capitalism: A Prospectus"
Arthur L. Tolson, Southern University
Commentator: Gerald McWorter, Fisk University

FRIDAY, OCTOBER 25, 1974
1:45 p.m., Carnival Room
BLACK STUDIES DIRECTORS AND TEACHERS, Discussion
Clara L. Brock, Lincoln University, Pennsylvania, Chairman

FRIDAY, OCTOBER 25, 1974
3:30 p.m., Poor Richard Room, Parlor A
MARYLAND BLACKS DURING THE AMERICAN REVOLUTION
Presiding: Daniel Williams, Tuskegee
"First Steps Toward Freedom The Impact of the American Revolution Upon Manumission in Maryland, 1775-1790"
W. L. Calderhead, U. S. Naval Academy
"Black Marylanders During the Revolutionary Period"
Clarence K. Gregory, Community College of Baltimore
Commentator: Oscar Williams, Virginia State College

FRIDAY, OCTOBER 25, 1974
3:30 p.m., Poor Richard Room, Parlor B
CONCEPTIONS OF BLACK PHILOSOPHY AND IDEOLOGY
Presiding: Mary Berry, University of Maryland, College Park
"Herder, Blacks, and the Negeridyllen: A Study in Ambivalent Humanitarianism"
Marian Musgrave, Miami University, Ohio
"The New Negro and the Ideological Origins of the Integrationists Movement: A Speculative Essay"
Johnnella Butler, Smith College and Marable Manning, Smith College
"The Capital (N) Struggle"
Donald L. Grant, Fort Valley State College
"Neonatal Presociety in the Black Experience,"
Harry Morgan, Syracuse University
Commentator: Clarence A. Bacote, Atlanta University

FRIDAY, OCTOBER 25, 1974
3:30 p.m., William Penn Room
RADICALISM IN LATIN AMERICA
Presiding: Norman E. Hodges, Vassar College
"Revolutionary Ideas and the Origins of the Brazalian Anti-Slavery Movement"
Cleveland Donald, Monkton State University of New York'
"A New Focus in Curriculum Education For Freedom"
Carlton R. Deonana, Elizabeth City State University
"The Blacks in the U.S. and Latin American Wars of Independence: A Comparative Study"
C. Richard Arean, Rio Honod College
Commentator: Charles Simmons, Norfolk State College

FRIDAY, OCTOBER 25, 1974
3:30 p.m., Commodore Barry Room
AFRO–AFRICAN–AMERICAN LITERATURE

Presiding: Thelma Conley, Lincoln University, Missouri

"African Literature and Society: An Examination of Anthropological Approach to the Interpretation of African Fiction"
Maurice Law Costello, University of California at Los Angeles

"Afro-American History in Foreign Periodical Literature"
Dwight L. Smith, Miami University

"Charles W. Chestnut and the Literary World He was Pitted Against"
J. Noel Heermance, Lincoln University, Missouri

Commentator: Maurice Ndukwu, West Connecticut State College

FRIDAY, OCTOBER 25, 1974
3:30 p.m., Valley Forge Room, Parlor A
INDUSTRIAL AND CITY SLAVES

Presiding: Ralph Carter, Rutgers University

"The Failure of Urban Slavery: James P. Thomas and the Black Community in Ante-Bellum Nashville"
Loren Schweninger, Greensboro, North Carolina

"Slaves and Masters on Chesapeake Iron Plantations During the Revolutionary Era"
Ronald L. Lewis, Akron, Ohio

"The Impact of Self-Hire: Antebellum Period"
Edna B. McKenzie, Community College of Allegheny County

Commentator: James F. Steirer, Clemson University

FRIDAY, OCTOBER 25, 1974
3:30 p.m., Valley Forge Room, Parlor B
URBAN BLACKS AND POLITICS

Presiding: Kariuki Karei, Voorhees College

"Gary Indiana: Its Black Experience, 1906-1973"
Dharathula H. Millender, State Director ASALH, Gary, Indiana

"Black Political Behavior in Washington, D.C.: 1964-1972"
Warren E. Stickle, Purdue University

"The Black Family: A Study in Survival"
Bonnie J. Gillespie, Shaw University

Commentator: Robert Parker, Wm. & Jewel College, Missouri

FRIDAY, OCTOBER 25, 1974
3:30 p.m., Washington Room
UMUM: Colloquium In Black Philadelphia Oral History

Presiding: James G. Spady, Philadelphia

"Marcus Garvey and The Philadelphia Division of the U.N.I.A."
Thomas J. Harvey, Philadelphia

"Early Black Banking and Haitian – Black American Coffee Trade in Philadelphia: 1920-1950"
Emanuel C. Wright, Philadelphia

"The Black Art Scene in Philadelphia – 1930-1970's"
Samuel Brown, Philadelphia

FRIDAY, OCTOBER 25, 1974
3:30 p.m., Jefferson Room
BLACK AMERICANS DURING THE PROGRESSIVE PERIOD
Presiding: Betty Thomas, University of Maryland
"The Day the River Ran Red: The Wilmington Racial Massacre November 10, 1898"
H. Leon Prather, Sr., Tennessee State University
"Reverend George Washington Woodbey: Early Twentieth Century Black Socialist"
Philip S. Foner, Lincoln University, Pennsylvania
"Richard T. Greener, Vlodivostock 1898-1905: Reward or Exile"
Allison Blakely, Howard University
Commentator: Charles Crowe, University of Georgia, Athens, GA.

FRIDAY, OCTOBER 25, 1974
3:30 p.m., Franklin Room
BLACKS AS PLAYWRIGHTS
PRESIDING: Gayle Plummer, Fisk University
"The Black Female Playwright"
Joyce D. Mobley, University of Washington
"The Plays of Broadway's Black Playwrights"
Al Boswell, Westside High School, Gary, Indiana
"Negro Minstrels and Blacks: A Look at Minstrel Material and the Milieu in which it Flourished"
Bernice McElroy, Board of Education, Chicago, Illinois
Commentator: Andrew Jackson, Tennessee State University

FRIDAY, OCTOBER 25, 1974

6:00 p.m., CRYSTAL BALLROOM
Fourth General Session
ASALH Region and Branch
Get-Aquainted Dinner

Presiding: Edgar Allan Toppin

Greetings: Warren Marshall, Director, Region II, ASALH

Address: *Our New and Dynamic Association*
Etta Moten Barnett, Author and Motion Picture Actress, Chicago, Illinois

8:00 p.m. CRYSTAL BALLROOM
Regional Planning Sessions
Wille L. Miles, Associate

9:00 p.m. CRYSTAL BALLROOM
Fifth General Session
Business

Presiding: Edgar Allan Toppin, President

Minutes of the 1973 Convention

A100
Appendix B to Opinion

Presentation of General Officers

Report of the Executive Director
Journal of Negro History
Negro History Bulletin
J. Rupert Picott, Executive Director
Lorraine A. Williams, Editor, the JOURNAL
Thelma D. Perry, Executive Editor, the BULLETIN

Report of the Secretary-Treasurer
Charles Walker Thomas
Report of the Executive Council
The Chairman
New Business

SATURDAY, OCTOBER 26, 1974

8:30 a.m., GARDEN TERRACE
Exhibits
Registration – All Day

9:00 a.m., CRYSTAL BALLROOM
Sixth General Session
Business-continued

Presiding: Edgar Allan Toppin, President

The Associated Publishers, Inc.
John W. Davis, Chairman
Arnett G. Lindsay, Secretary
Louis R. Mehlinger, Treasurer
J. Rupert Picott, Executive Director

SATURDAY, OCTOBER 26, 1974
10:30 a.m., Washington Room
BLACK NATIONALISM IN AFRICA
Presiding: Clara Small, Lincoln University, Missouri
"Blacks or Coloreds as Africa's Redemption?"
"Some Considerations of the Origins of Black Nationalism in Nineteenth Century Liberia"
M. B. Okpan, Howard University
"The Tanyam Railway: A Symbol of Nationalism vs. Imperialism"
Merze Tate, Howard University
Commentator: Edgar Tucker, Lincoln University, Missouri

SATURDAY, OCTOBER 26, 1974
10:30 a.m., Poor Richard Room, Parlor A
TEACHING AFRICA IN THE ELEMENTARY SCHOOL
Presiding: Evelyn Jones Rich, African-American Institute, New York
Panel Discussion:
"A Lost Pride Regained: Teaching Africa in the Elementary Schools"
Panelists: Anita Broadwater, Philadelphia
Nancy Fields, Consultant, Elementary Education, Harris Teachers College
Claude Mangum, Fordham University

SATURDAY, OCTOBER 26, 1974
10:30 a.m., Poor Richard Room, Parlor B
THE ECONOMIC AND SOCIAL PLIGHT OF BLACKS: 1890-1943

Presiding: Louis Cantor, Indiana University

"Henry Alexander Hunt and Southern Black Farmers, 1890-1938"
Donnie Bellamy, Fort Valley State College

"The Beaumont Texas Race Riot, 1943"
James A. Burran, University of Tennessee

Commentator: Elwyn E. Breaux, Langston University

SATURDAY, OCTOBER 26, 1974
10:30 a.m., William Penn Room
PHILLIS WHEATLEY RECONSIDERED

Presiding: Myrts Mosley, University of Cincinnati

"Analysis of Selected Poetry of Phillis Wheatley"
Angelene Jamison, University of Cincinnati

"Phillis Wheatley: A Black Perspective"
Eleanor Smith, University of Cincinnati

"The World of Phillis Wheatley"
James A. Rawley, University of Nebraska

"Phillis Wheatley Revisited"
S. Jay Walker, Dartmouth College

Commentator: Rosalyn Penn, Morgan State University

SATURDAY, OCTOBER 26, 1974
10:30 a.m., Valley Forge Room, Parlor A
BLACK CONTRIBUTIONS AND THE AMERICAN REVOLUTION

Presiding: Janette Harris, Howard University

"Some Sidelights on New England Soldiers in the American Revolution"
Lorenzo Greene, Lincoln University, Missouri

"The Status of Black Craftsmen During and After the American Revolutionary Period"
Harold G.Cureau, Southern University

"Contributions of Black People in Art After the American Revolution"
Hans Bhalla, Spelman College

"Blacks on the Southern Frontier: 1775-1783"
J. Reuben Sheeler, Texas Southern University

Commentator: Helen G. Edmonds, North Carolina Central University

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SATURDAY, OCTOBER 26, 1974
10:30 a.m., Valley Forge Room, Parlor B
METHODS AND MATERIALS FOR TEACHING AFRO-AMERICAN STUDIES IN SECONDARY SCHOOLS

Presiding: William C. Green, School District of Philadelphia

Panelists: Armita Simms, Rhodes Middle School, Philadelphia
Gloria Pelzer, Martin Luther King High School, Philadelphia
Naomi Hamilton, William Penn High School, Philadelphia
Arthur Willis, Bartram High School, Philadelphia

SATURDAY, OCTOBER 26, 1974
10:30 a.m., Jefferson Room
BLACK EDUCATORS: PAST AND PRESENT
Presiding: Frank Toland, Tuskegee Institute
"The Travail of Nathan B. Young"
Raymond Wolters, University of Delaware
"Education and the Dilemma of Race and Class"
H. Viscount Nelson, Dartmouth College
"Dr. Laurence C. Jones, A Portrait of a Black Mississippian"
Alferdteen Harrison, Jackson State College

SATURDAY, OCTOBER 26, 1974
10:30 a.m., Carnival Room
BLACK STUDIES DIRECTORS AND TEACHERS, Discussion
Clara L. Brock, Lincoln University, Pennsylvania, Chairman

SATURDAY, OCTOBER 26, 1974
10:30 a.m., Commodore Barry Room
DESCENDANTS OF FREDERICK DOUGLASS AND BOOKER T. WASHINGTON
Presiding: Eiben Jackson, Southern New York College
"Multifaceted Mrs. Douglass,"
Portia M. Shuler, Southern University
"Booker T's Child,"
Roy Hill, State University of New York, Brockport
Commentator: Anita McGorden, Lincoln University, Missouri

SATURDAY, OCTOBER 26, 1974
10:30 a.m., Franklin Room
THE ROLE OF BLACK WOMEN IN AMERICAN HISTORY
Presiding: Mary Turner, Lincoln University, Missouri
"The Black People During and After the Revolutionary War"
Wilhelmina M. Crosson, 195 W. Springfield St., Boston, Mass.
"The Black Woman"
Juanita Browne, The College of Wooster
"Black Women in the Blues Tradition"
Daphne D. Harrison, University of Maryland
Commentator: Ruby Patterson, College of St. Benedict

SATURDAY, OCTOBER 26, 1974
1:45 p.m., Washington Room
MINORITY STUDIES
Presiding: Erwin Salk, Professor, Columbia College, Chicago, Illinois
MISSING PAGES IN U.S. HISTORY: THE AMERICAN INDIAN/ CHICANO/WHITE APPALACHIAN
Panelists: Mike Clark, President, Highlander Center
John Trudell, National Chairman, American Indian Movement
Jorge Prieto, Inner City Medical Service, Chicago
Julian Samora, University of Notre Dame

SATURDAY, OCTOBER 26, 1974
1:45 p.m., Poor Richard Room, Parlor B
BLACKS IN THE MEDIA

Presiding: Ernestein Walker, Morgan State College

"The Effects on the Self-Image of the Afro-American and the Perpetuation of Racism in the Dissemination of Historical Studies by the Communications Media"

Father Boniface Hardin, Ed., *The Afro-American Journal*

"The Images of Black Women in American Commercial Film, 1915-1973"

Phyllis Boanes, Howard University

Commentator: Ann Allen Shockley, Fisk University

SATURDAY, OCTOBER 26, 1974
1:45 p.m., Valley Forge Room, Parlor A
BLACK PROTEST IN MUSIC AND POETRY

Presiding: Elliot Skinner, Columbia University

"Soul Music: The Voice of a New Black Assertiveness'

Marian Tally Brown, Florida Junior College

"The American Dream and the Legacy of Revolution in the Poetry of Langston Hughes"

Lloyd W. Brown, University of Southern California

Commentator: Clifford Harper, Southern Illinois University

SATURDAY, OCTOBER 26, 1974
1:45 p.m., Valley Forge Room, Parlor B
WHITE ATTITUDES TOWARD BLACKS DURING THE AMERICAN REVOLUTION

Presiding: Edward Beasley, Black Motivation Training Center, Kansas City, Kansas

"Attitude of White Massachusetts Towards Slavery During the American Revolution"

Antionie Holland, Lincoln University, Missouri

"The Revolution of White Attitudes Toward Blacks in Revolutionary America, 1776-1783"

J. A. Adefila, Brandeis University

Commentator: W. Augustus Low, University of Maryland

SATURDAY, OCTOBER 26, 1974
1:45 p.m., William Penn Room
AFRICAN HISTORY, TWO CONTRIBUTORS ESTEVANICO: MARTIN R. DELANY

Presiding: Walter Robinson, Southern University

"Estevanico Africa's greatest Explorer of the Southwest and Discoverer of Arizona and New Mexico"

Tendon Mutinhu, Cornell University

"Martin R. Delany and Robert Campbell, Black American in Search of an African Colony"

Richard Blockett, University of Pittsburgh

Commentator: Robert Brisbane, Morehouse College

SATURDAY, OCTOBER 26, 1974
1:45 p.m., Benjamin Franklin Room
GAPS IN BLACK HISTORY

Presiding: James George, South Carolina State University
"Black Music: Composers in Philadelphia before 1850"
Arthur R. Labrew, Southern University
"The History of Black in Oregon 1788-1950: An Assessment"
Glenwood Davis, Portland State University
Commentator: Olivia Pearl Stokes, Herbert Lehman College

SATURDAY, OCTOBER 26, 1974
1:45 p.m., Jefferson Room

DEMONSTRATION: NEW DIMENSIONS IN TEACHING THE AFRO-AMERICAN EXPERIENCES: REACTING TO FOGEL AND ENGERMAN'S *TIME ON THE CROSS*

Presiding: John Henrik Clarke, Hunter College
Mrs. Evelyn Jones Rich, Presentor
School Services Division African-American Institute, New York

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SATURDAY, OCTOBER 26, 1974
3:30 p.m. Washington Room
BLACK STUDIES: METHODOLOGY AND TECHNIQUES

Presiding: Bettye Gardner, Coppin State College
"New Direction for Black Studies at IUN"
Joseph C. Pentecoste, Indiana University, Northwest
"Revolutionizing Black Minds: Guidelines for Black studies"
Ivory P. Phillips, Jackson State College
"Black Studies Revisited: A Comparative View of the Teaching of Black Studies In White and Black Colleges"
Lorenzo Battle, Madison Heights, Michigan
Commentator: Lillian Anthony-Welch, University of Nebraska, Omaha

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SATURDAY, OCTOBER 26, 1974
3:30 p.m., Poor Richard Room, Parlor A.
PERSPECTIVES IN TEACHING AFRO-AMERICAN STUDIES IN THE ELEMENTARY SCHOOLS

Presiding: Gwendolyn Brightful, Resource Teacher in African and Afro-American Studies, School District of Philadelphia
Panelists: Marilyn Porter, Pratt Arnold Elementary School, Philadelphia
John Carter, Oliver Wendell Holmes Elementary School, Philadelphia
Rose Martin, Overbrook Elementary School, Philadelphia

SATURDAY, OCTOBER 26, 1974
3:30 p.m., Poor Richard Room, Parlor B
TOWARD ECONOMIC SECURITY: BLACKS IN THE LABOR FORCE: 1880-1970

Presiding: Romeo B. Garrett, Purdue University
"Southern Blacks and the Knights of Labor"
Melton A. McLaurin, University of South Alabama
"The Tragedy at Gauley Bridge"
Irwin Marcus, Indiana University of Pennsylvania
"World War I and the Great Migration"
Rose Hayes, Evanston, Illinois
Commentator: W. Sherman Jackson, Miami University, Oxford, Ohio

SATURDAY, OCTOBER 26, 1974
3:30 p.m., William Penn Room
PROTEST AND THE BLACK PRESS

Presiding: Harold Pinkett, National Achives

"The Black American Press and the New Manifest Destiny: The Waller Affair"
Randall Woods, University of Arkansas

"A Segregated Army Division for Blacks?: Robert L. Vann of the *Courier* Against Walter White, 1938-1940"
Andrew Buni, Boston College

"The Afro-American Press and the Protest Tradition, 1880-1920: William Calvin Chase and the Washington *Bee*: A Case Study"
Hal S.Chase, Simpson College

Commentator: Arnold Taylor, Howard University

SATURDAY, OCTOBER 26, 1974
3:30 p.m., Commodore Barry Room
THE BLACK EXPERIENCE IN AMERICA

Presiding: Marcella Jones, Teacher of Social Studies
Gratz High School, Philadelphia

Panelists:
"The Black Experience in Religion"
Ethelyn S. Hamilton, Student, West Philadelphia High School
"The Black Family in America"
Renee Gillard, Student, Overbrook High School, Philadelphia
"Blacks in Business'
Michelle Meekins, Student, Girls High School, Philadelphia
"Introduction to the Black Experience"
Greg Green, Student, Overbrook High School, Philadelphia
"Blacks in Politics: The Republican Party"
Marva Forrester, Student, West Philadelphia High School, Philadelphia

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SATURDAY, OCTOBER 26, 1974
3:30 p.m., Valley Forge Room, Parlor A
BLACKS IN TRANSITION: AN ASSESSMENT

Presiding: Leedell W. Neyland Florida A. & M. University

"Black Colonialism in White America"
Howard O'Dell Lindsey, Jr. Highland Park Community College, Michigan

"SNCC: The Transition to Black Power, 1964-1966"
Anderson Williams, Morehouse College

"History of Black Struggle for Freedom – Notes from a New World"
Vincent Harding, Institute of the Black World,Atlanta, Georgia

Commentator: Diana Klebanow, Forest Hills, New York

SATURDAY, OCTOBER 26, 1974
3:30 p.m., Valley Forge Room Parlor B
AMERICAN PRESIDENTS AND AFRO-AMERICANS

Presiding: Joseph Taylor, Bethune-Cookman College

"Theodore Roosevelt on Race and Progress'
Thomas E. Dyer, University of Georgia

"The Black Press and the Application of Wilsonian Carribean Policy in Haiti, 1913-1917"
Purvis M. Carter, Prairie View A. & M. College

"JFK and Black America"
Donald C. Lord, Unity College

Commentator: Nolan Jones, University of Michigan

SATURDAY, OCTOBER 26, 1974
3:30 p.m., Carnival Room
BLACK HISTORIOGRAPHY AFRO-AMERICAN & AMERICAN
LIBERIA, 1930-1935

Presiding: Thomas Holt, Howard University

"The Del. MNA: A Problem in Afro-American Historiography"
I. K. Sundiata, Northwestern University
"Black Congressmen: The Phantoms of Reconstruction Historiography"
Joseph Fineman, University of Arizona and John Hosmer
University of Arizona
"African-American History: Its Relevance and Central Themes"
Wittington B. Johnson, University of Miami
"Alexander Crummel and the Black Intellegentisa"
C. R. Stockon, Talledega College
Commentator: Earl E. Thorpe, North Carolina Central University

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SATURDAY, OCTOBER 26, 1974
3:30 p.m., Jefferson Room
THE BLACK SOLDIER

Presiding: Winston McIntosh, State University of New York, Binghamton

"The Army and Black People During the Civil War"
Pete Maslowski, University of Nebraska
"Black Union Soldiers in Confederate Prisons"
Walter L. Williams, University of Cincinnati
"Theodore Roosevelt and the American Image of the Black Soldier"
William Ziglar, St. Davids
Commentator: Herbert Marshall, Norfolk State College

SATURDAY, OCTOBER 26, 1974
3:30 p.m., Franklin Room
ANTEBELLUM BLACKS: POLITICS AND ACTIVISM

Presiding: William E. Nelson, Ohio State University

"The Origins of Black Political Thought: 1780-1830"
Leo Trice, Florrisant Valley Community College, St. Louis
"David B. Ruggles: Radical Black Abolitionist of the 1830's"
Margot S.Webb, Jamaica, New York
"Negro Election Day and the New England Black Community 1750-1860"
Joseph P. Reidy, DeKalb, Illinois
Commentator: Richard Sewell, University of Wisconsin

SATURDAY, OCTOBER 26, 1974

6:30 p.m., CRYSTAL BALLROOM
Seventh General Session
Convention Banquet

Presiding:	Edgar Allan Toppin, President
Greetings:	The Honorable Richard N. C. Nix, Member of Congress
Songs:	Metro Liberation Chorale, Cuyahoga Community College, Cleveland
Presentation:	Carter G. Woodson Family
Address:	"Black Americans and Expanding Job Opportunities" The Reverend Leon H. Sullivan, Founder and Chairman of the Board, Opportunities Industrialization Centers

SUNDAY, OCTOBER 27, 1974

10:00 a.m. CRYSTAL BALLROOM
Eighth General Session
Convention Brunch

Presiding: Edgar Allan Toppin, President

Convention Report: J. Rupert Picott, Executive Director

Address: "Education: Today and Tomorrow Requisite"
The Honorable C. Delores Tucker,
Secretary of State, Commonwealth of Pennsylvania, Harrisburg

PARTICIPANTS 59th ANNUAL MEETING
ASALH
BENJAMIN FRANKLIN HOTEL, Philadelphia, Pennsylvania
OCTOBER 23, 24, 25, 26, 27

Adams, Russell
Adefila, J. A.
Akpan, M. B.
Alexander, Raymond Pace
Alexander, Roberta Sue
Anthony-Welch, Lillian
Aptheker, Herbert
Arean, C. Richard
Bacote, Clarence A.
Banks, James A.
Barnett, Etta Moten
Barnett, Margie
Barrow, Lionel
Battle, Lorenzo
Beasley, Edward
Bellamy, Donnie
Berry, Mary
Bhalla, Hans
Blakely, Allison
Blassingame, John
Blockett, Richard
Boanes, Phyllis
Boswell, Al
Bratton, Mary Jo
Breaux, Elwyn E.
Brightful, Gwendolyn
Brisbane, Robert
Broadwater, Anita
Brock, Clara L.
Brown, Lena
Brown, Lloyd W.
Brown, Samuel
Brown, Marian Tally
Browne, Juanita
Buni, Andrew
Burran, James A.
Butler, Johnnella
Calderhead, W. L.
Campbell, Clarice T.
Cantor, Louis
Carpenter, Joseph
Carter, John
Carter, Purvis M.
Carter, Ralph
Chase, Hal S.
Chavis, John
Clark, Mike
Clarke, John Henrick
Cone, James H.
Contee, Clarence G.
Cook, Philip L.
Conley, Thelma
Cornwell, Sophy H.
Costanzo, Matthew W.
Costello, Maurice Law
Crosson, Willehmina M.
Crowe, Charles
Cureau, Harold G.
Dalfiume, Richard
Darden, Joe
Davis, Glenwood
Davis, John W.
Deonana, Carlton R.
Deskins, Donald, Jr.
Desselle, Frances
Donald, Cleveland
Dyer, Thomas E.
Edmonds, Helen G.
Ellis, Ethel
Evans, Joanne
Farley, Ena L.
Farrell, Walter, Jr.
Fields, Nancy
Fineman, Joseph
Flanagan, Dan
Foner, Philip S.
Ford, Nick Aaron
Forrester, Marva
Franklin, John Hope
French, George
Friedman, Lawrence J.
Fullinwider, S. P.
Gaboury, William J.
Gallagher, Joseph T.
Garner, Bettye
Garrett, Romeo B.
Gault, Alva
George, James
Gilespie, Bonnie J.
Gillard, Renee
Gilmore, Al-Tony
Goldman, Martin S.
Goode, Kenneth
Grant, Donald L.
Gray, Vernon
Green, Greg
Green, William C.
Greene, Lorenzo
Gregory, Clarence K.
Gregory, C. W.
Grothaus, Larry
Guinier, Ewart
Halliburton, R., Jr.
Hamilton, Naomi
Hamilton, Ethelyn S.
Hardin, Father Boniface
Hardin, Vincent
Harlan, Louis
Harper, Clifford
Harris, Janette
Harrison, Alferdteen
Harrison, Daphne D.
Harvey, Thomas J.
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Heermance, J. Noel
Height, Dorothy
Higginbotham, A. Leon, Jr.
Hill, Roy
Hodges, Norman E.
Hofferman, Manuel

Holland, Antionie
Hollomans, Margaret G.
Holt, Thomas
Hornsby, Alton H.
Howard, Victor B.
Jackson, Andrew
Jackson, Eiben
Jackson, W. Sherman
Jacobs, Donald M.
Jacobs, Sylvia M.
James, Felix
Jamison, Angelene
Johnson, Wittington B.
Jones, Marcella
Jones, Mark
Jones, Nolan
Karel, Kariuki
Kay, Marvin L.
King, William M.
Klebanow, David
Kneebone, John T.
Krafsur, Richard
Kutler, Stanley
Labrew, Arthur R.
Leland, Frank
Letiche, John M
Lewis, Ronald L.
Lindsay, Arnett G.
Lindsey, Howard O'Dell, Jr.
Lord, Donald C.
Low, W. Augustus
McAffee, Wilbur C.
McCain, James A.
McConnell, Roland
McElroy, Bernice
McGordon, Anita
McKenzie, Edna B.
McLaurin, Melton A.
McLemore, Leslie
McWorter, Gerald
Magdol, Edward
Mangum, Claude
Marable, W. Manning
Marcus, Irvin
Martin, Rose
Maslowski, Pete
Meekins, Michelle
Meier, August
Mehlinger, Louis R.
Mering, John
Miles, Willie L.
Millender, Dharathula
Minter, Thomas K.
Mitchell, Reavis L.
Mobley, Joyce D.
Morgan, Harry
Mosley, Myrts
Murphy, Ernest L.
Mutinhu, Tendon
Musgrave, Marian
Ndukwu, Maurice
Nelson, H. Viscount
Nelson, William E.
Neyland, Leedell W.
Nix, Richard N. C.
Nixon, George
Nwani, Okonkwo
Obichere, Boniface
Ogeden, Nwachwkwu
O'Connell, Lucille
Okpan, M. B.
Palmer, Colin
Patterson, Ruby
Penn, Rosalyn
Peloso, Vincent
Pelzer, Gloria
Pentecoste, Joseph C.
Perry, Thelma D.
Peters, Maurice E.
Phillips, Ivory P.
Picott, J. Rupert
Plumner, Gayle
Porter, Dorothy
Porter, Marilyn
Prather, H. Leon
Pride, Armistead
Prieto, John
Quarles, Benjamin
Ralston, Richard David
Rawley, James A.
Reed, George
Reidy, Joseph P.
Reese, Calvin
Rich, Evelyn Jones
Robinson, Walter
Rudwick, Elliot
Sabin, James T.
Samora, Julian
Salk, Erwin
Schweninger, Loren
Sewell, Richard
Scott, William R.
Sheeler, J. Reuben
Shockley, Ann Allen
Shuler, Portia M.
Simms, Armita
Simmons, Charles
Skinner, Elliot
Small, Clara
Smith, Dwight L.
Smith, Eleanor
Smith, Jesse Carney
Smith, Selden
Smith, William David
Smylie, James A.
Spady, James G.
Stamper, Virginia
Staples, I. Ezra
Steirer, James
Stickle, Warren E.
Stockton, C. R.
Strickland, Avarah E.
Sullivan, Leon H.
Sundiata, I. K.
Tate, Merze
Tatum, C. Edward
Taylor, Arnold
Taylor, Joseph H.
Thomas, Arthur
Thomas, Charles Walker
Thornbrough, Emma Lou
Thrope, Earl E.
Toland, Frank
Tolson, Arthur L.
Toppin, Edgar Allan
Trice Leo
Trudell, John
Tucker, C. Delores
Tucker, Edgar
Turner, Mary
Tuttle, William, Jr.
Vontress, Clemmont Eyvind
Walker, S. Jay
Walker, Ernestine
Walters, Ronald
Walton, Hanes
Washington, Austin D.
Webb, Margot S.
West, Earle H.
Williams, Anderson
Williams, Daniel
Williams, Lorraine A.
Williams, Oscar
Williams, Russell S.
Williams, Walter L.
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Willis, Arthur
Wolers, Raymond
Woods, Randall
Wright, Emanuel C.
Yancy, Dorothy Cowser
Ziglar, William

Appendix B to Opinion

EXHIBITORS

Association for the Study of Afro-American Life and History

Association for the Study of Afro-American Life and History Regional Exhibits

Journal of Negro History

American Airlines, Inc.

Kraus-Thomson Organization Ltd.

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Thomas Y. Crowell Company

Heritage Publications, Inc.

International Publishers

William Morrow and Company

American University Press Services, Inc.

Atheneum Publishers

National Archives

National Association for the Advancement of Colored People

Pennsylvania Historical and Museum Commission

Oxford University Press

Anchor Press of Doubleday and Company, Inc.

United States Civil Rights Commission

Humanities Press, Inc.

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National Education Association

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STARKE, GEORGE H.	Director, Government Affairs

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Appendix B to Opinion

49th ANNUAL OBSERVANCE

AFRO-AMERICAN HISTORY WEEK

February 9-16, 1975

GENERAL THEME: FULFILLING AMERICA'S PROMISE

Daily Discussion Topics

Sunday, February 9 - The Bicentennial and the Afro-American

Monday, February 10 - Employment and The Black American

Tuesday, February 11 - Politics and Power: Afro-American Leadership

Wednesday, February 12 - Education: Today and Tomorrow Requisite

Thursday, February 13 - Behavior Patterns: Afro-American Dilemma

Friday, February 14 - Housing: Citizen Challenge

Saturday, February 15 - Local Historic Sites and Monuments

Sunday, February 16 - Religion - Our Nation's Heritage

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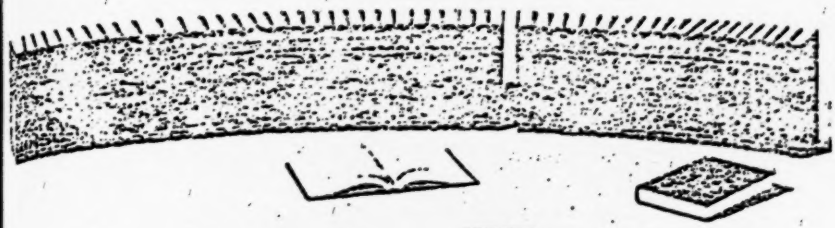

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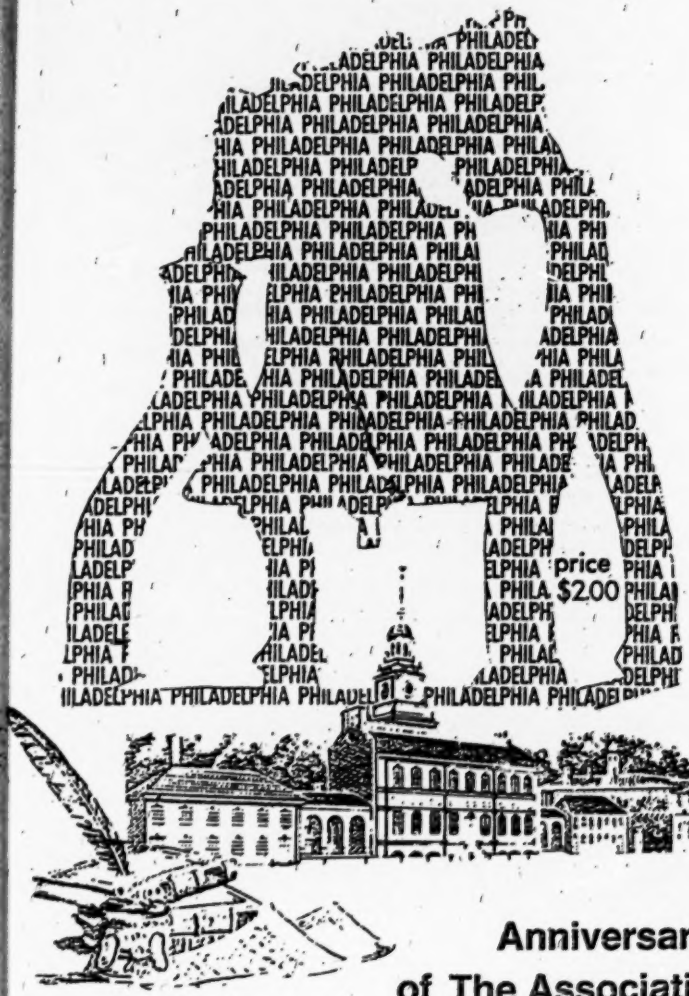
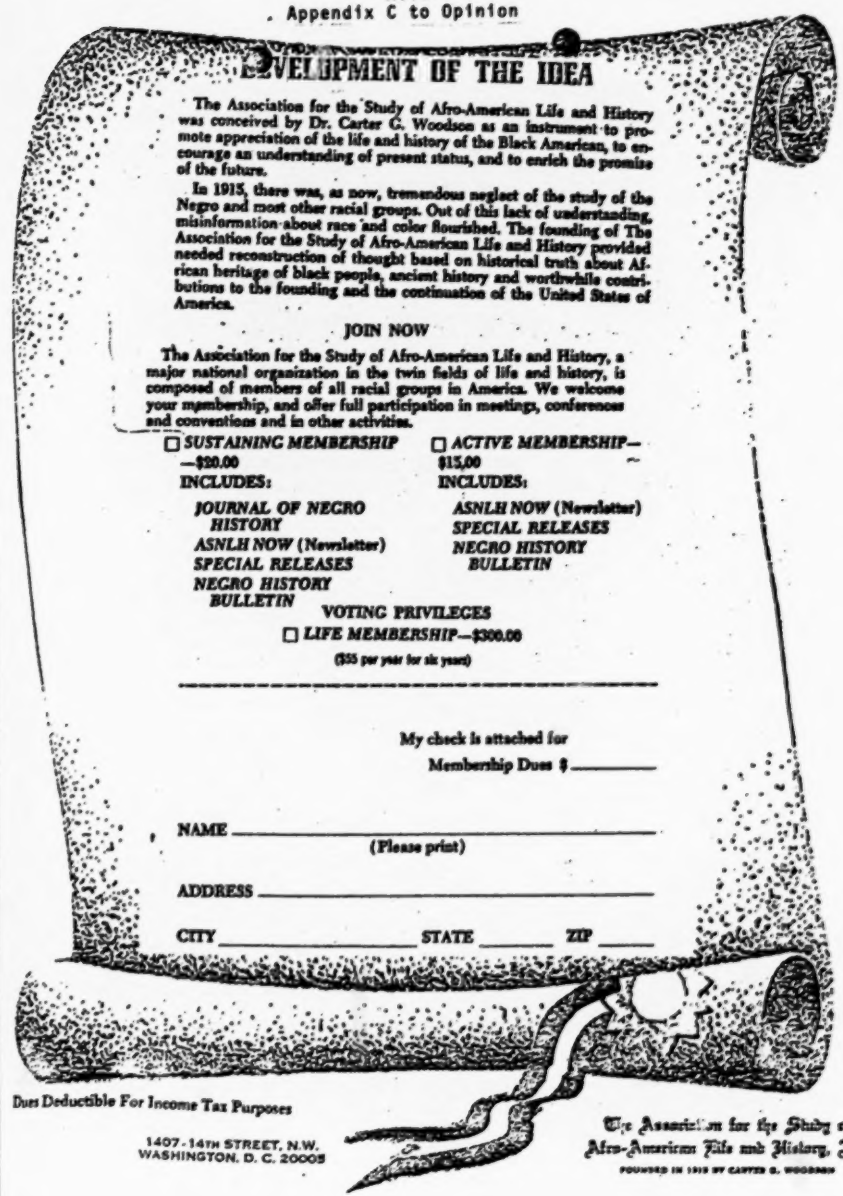


Souvenir Journal

The 59th Anniversary Meeting of The Association for the Study of Afro-American Life and History

The Benjamin Franklin Hotel • Philadelphia, Pennsylvania

October 23-27, 1974



DEVELOPMENT OF THE IDEA

The Association for the Study of Afro-American Life and History was conceived by Dr. Carter G. Woodson as an instrument to promote appreciation of the life and history of the Black American, to encourage an understanding of present status, and to enrich the promise of the future.

In 1915, there was, as now, tremendous neglect of the study of the Negro and most other racial groups. Out of this lack of understanding, misinformation about race and color flourished. The founding of The Association for the Study of Afro-American Life and History provided needed reconstruction of thought based on historical truth about African heritage of black people, ancient history and worthwhile contributions to the founding and the continuation of the United States of America.

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1407-14TH STREET, N.W.
WASHINGTON, D. C. 20005

The Association for the Study of Afro-American Life and History, Inc.
FOUNDED IN 1915 BY CARTER G. WOODSON

59th Anniversary Meeting

October 23-27, 1974

ASSOCIATION FOR THE STUDY OF AFRO-AMERICAN LIFE AND HISTORY

at the BENJAMIN FRANKLIN HOTEL, PHILADELPHIA, PA.

SOUVENIR JOURNAL

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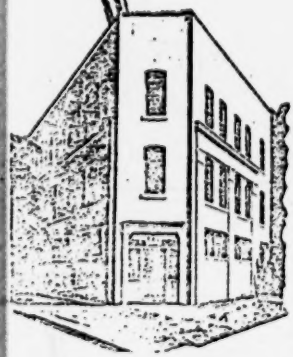

Edgar A. Toppin
President

Charles Walker Thomas
Secretary-Treasurer

J. Rupert Picott
Executive Director

Founded September 9, 1915, By Carter G. Woodson
1401 Fourteenth Street, N.W. Washington D.C. 20005

Mrs. Ingraham

In Memory

In Loving Memory of Our Mother
Edyth Hooper Ingraham
who passed Saturday, May 18, 1974
Maurice L. Ingraham
Mrs. Angelina Maker and family

THE ASSOCIATION FOR THE STUDY OF AFRO-AMERICAN LIFE AND HISTORY, INC.
The Association for the Study of Negro Life and History, Inc., Division
The Associated Publishers, Inc., Division
1401 Fourteenth Street, N.W. Washington, D.C. 20005 202-667-2822

To My Colleagues and Friends, Greetings:

Welcome to the Philadelphia ASALH Convention.

This fifty-ninth Anniversary session of the Association for the Study of Afro-American Life and History has been planned with you in mind. The convention will focus on a wide spectrum of issues, events and personalities in the Black experience.

This conference promises to be the largest and the best ever. More than 100 scholars, teachers and lay specialists will lead the eight general and 50 special sessions spread over the four convention days.

The general sessions, banquet, luncheon, and brunch are designed with intimate relevance to the Black Movement in America and the world. The numerous group sessions will provide tremendous opportunities for exploration and planning definitive action. The time-honored, successful approach through scholarly papers, pragmatic resolutions and systematic plans will again be featured. The business sessions will offer the place and the time for adoption of recommendations and procedures for charting the vibrant ASALH that now is a "must" of the new scene. The exhibits, greatly increased in number and appeal, will provide the overview of the field, including new developments for the "decade of the seventies."

In accord with our ASALH image and dynamism, the convention facilities are commodious and rank with the best in the country. Of course, the City of Philadelphia, first in the nation in so many facets of history, is a natural "at home" base for "lovers" of the record of the past and prognosticators of the future.

We are happy that you are here. ASALH national officers, regional directors, local chapters' leaders and members extend fond wishes. We are convinced that together - through all of us - ASALH can reach new heights of contribution and spirit in the days and years ahead.

J. Rupert Picott
Executive Director

WELCOME DELEGATES

TO THE

59TH ANNIVERSARY MEETING

OF

THE ASSOCIATION FOR THE STUDY

OF

AFRO-AMERICAN LIFE AND HISTORY

SINE MORIBUS

UNIVERSITY OF PENNSYLVANIA

In Memory

In Memory of our Esteemed Past President and
Executive Director
Mrs. Edyth H. Ingraham
Sorrowfully missed,
By the Philadelphia Branch of the Association for the
Study of Afro-American Life and History

In Memory

In Memory of the Inspiring Leadership and Years of
Rewarding Association
with Mrs. Edyth H. Ingraham
The James Elverson Elementary School Faculty and
Staff
The Elverson Home and School Association
The Episocopal Women of the Chruch
of the Annunciation

Governor Milton J. Shapp
Commonwealth of Pennsylvania

THANKS

The Association for the Study of Afro-American Life and History wishes to express its appreciation to leaders of the government of the United States, the Commonwealth of Pennsylvania, the City of Philadelphia, National 1974 Program Committee, Local 1974 Committees and Commissions, distinguished General Session speakers, sectional presenters of papers, commentators and discussion leaders of the sectional meetings, participants in the National Bicenntennial Black Heritage Conference, University of Pennsylvania, Temple University and other institutions, members in attendence at this 1974 convention and all others who shared in this meeting in any capacity.

Your interest, presence and cooperation have made this 59th Annual Convention the greatest in the history of the organization.

Congressman Robert N. C. Nix
2nd District of Pennsylvania

PROFILE

CARTER G. WOODSON

A son of former slave parents, Carter odwin Woodson was born December 19, 75, at New Canton, Buckingham County, ginia. This noted historian, author and ator passed away in Washington, D.C., on il 3, 1950, at the age of seventy-five.

Because of his parents' need of his ices on the family farm, young Woodson as unable to attend the local school during ch of his early years. By the time he was enteen, however, he had been able by struction to master the fundamentals of mmon school subjects.

With the desire of furthering his education, ter and his brother, Robert Henry, moved to linglon, West Virginia, where they had ed to attend Douglass High School. wever, Carter was forced to earn a living by ing in the coal fields of Fayette County, Virginia, being able, as a consequence, devote only a few months annually to his ucation.

Despite these handicaps, Carter, in 1895, in his twentieth year, entered Douglass h School, from which he earned a diploma ss than two years. Upon completion of his h school courses, young Woodson entered ro College of Kentucky, where in less than years he was awarded a certificate. mediately after leaving Berea College he gan teaching at Winona in Fayette County, st Virginia. Only four years after duating from Douglass High School, he ined to that institution as its principal.

While at Douglass High School, 1900-, Woodson completed his college studies took his Lit.B. degree from Berea College. hen accepted a position as supervisor of ools in the Philippines for four years. While he Philippines, he learned to speak anish fluently, continued to pursue his lege studies during the summers at the versity of Chicago, from which he received BA in 1907 and his M.A. a year later. For a r, he traveled in Asia, Egypt and Europe, ding a semester at The Sorbonne in Paris, re he took graduate studies in history and ored the French language.

Following further study at the University of icago, Woodson entered Harvard Univer- where he studies history and political ence. In 1909, he became a teacher of ch, Spanish, English and history in the lic schools of the District of Columbia. ching at both Dunbar and Armstrong High ools, he also served as principal of Armstrong in 1918-19. Meanwhile, th scholar-educator continued his studies c Harvard and gained his Ph.D. degree i history in 1912, presenting as his doctorc dissertation The Disruption of Virginia.

DR. WOODSON
1875 - 1950

In 1915, Dr. Woodson organized th Association for the Study of Negro Life anc History, which was incorporated under th laws of the District of Columbia on October of that year. On January 1, 1916, he publishec the first issue of the quarterly magazine Th Journal of Negro History, which continue publication until this date. Further, during hi leadership at ASNLH (now known as the Association for the Study of Afro-American Life and History), Dr. Woodson initiated in 1926 the annual observance of "Negro History Week" (now known as "African-American Histor Week"), and in 1937, he began publication c The Negro History Bulletin, which is still issuec monthly - October through May.

Between 1915 and 1950, Dr. Woodsor wrote not less than twenty-one books most c which were published by The Associatec Publishers, a firm which he organized in 192 "to produce books and pictures of Negroe not generally accepted by other firms" of the times. In 1922, he completed and publishec the first volume of The Negro in Our Histor, which was reprinted in 1923 and appeared ir updated editions in 1924, 1927, 1931, 1937 1941, 1945, 1947, 1962 and again in 1972.

The 1962 and 1972 editions were editec and updated by his long-time friend anc associate, Dr. Charles H. Wesley, who was late to become ASNLH executive director, a pos which Dr. Woodson had held from his founding of the Association in 1915 until his death in 1950.

Dr. Woodson taught for two years c Myrtilla Miner Normal School (D.C. Teacher College) while also serving as principal c Armstrong Manual Training High School. I 1918-19, he was dean of the School of Liberc Arts at Howard University, and, during 1920-2 he was dean of the West Virginia Collegiat Institute. In 1922, he retired altogether from teaching to devote full-time to historica research, writing and the operation of the Association for the Study of Negro Life and History.

Dr. Woodson received numerous citatior and awards from a variety of groups and organizations throughout the United State and abroad.

Ms. Dorothy I. Height
Prsident
National Council of Negro Women

Rev. Leon H. Sullivan
President
Opportunities Industrialization
Centers

Ms. DeLores Tuc
Secretary of St
Commonwealth of Pennsylva

Ms. Etta Moten Barnett
Member
Chicago Bicentennial
Commission

A. Leon Higginbotham
U. S. District Judge
Eastern District of Pennsylvania

Dr. Helen D. Edmonds
Professor of History
North Carolina Central University

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Executive Director

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Research Analyst

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Assistant

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The Negro History Bulletin

Helen G. Edmonds
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Staff Assistant
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Government Affairs

Moss H. Kendrix
Communications Consultant

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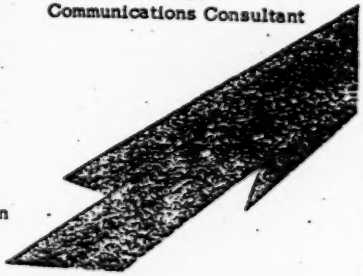
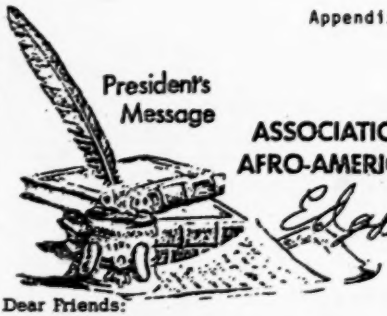
Staff Assistant
Subscription Division

Sister Anthony Scally
Staff Assistant
Subscription Division

Linda K. Thompson
Secretary



ASSOCIATION FOR THE STUDY OF
AFRO-AMERICAN LIFE AND HISTORY



President's Message

ASSOCIATION FOR THE STUDY OF AFRO-AMERICAN LIFE AND HISTORY

Edgar Allan Toppin
President

Dr. Toppin

Dear Friends:

Welcome to the 59th Annual Convention of the Association for the Study of Afro-American Life and History. We meet this year as the nation launches a seven-year celebration of the bicentennial of the American Revolution. It is fitting that we convene in the city acknowledged to be the focal point of that celebration, Philadelphia. This city of brotherly love is rich in traditions associated not only with the Revolution but also with the history of Blacks of the Revolutionary War Era.

Our convention begins on October 23, 1974, three days before the adjournment two hundred years ago of the First Continental Congress. That body met in Carpenter's Hall in Philadelphia from September 5 to October 26, 1774. The Second Continental Congress assembled in the State House (now Independence Hall) in Philadelphia in May, 1775, and served as our national government for the next six years, conducting the War for Independence. The Declaration of Independence was written and adopted by that Congress in 1776 in Philadelphia. And the Constitutional Convention met in Philadelphia in 1787 to draft our present basic frame of government.

Black history of the Revolutionary War period also finds a focal point in Philadelphia. Black soldiers served with General George Washington at Valley Forge, twenty miles from Philadelphia during the winter of 1777-78. The first national leader of Blacks, Bishop Richard Allen, and the first Black physician in America, Dr. James Derham, were born in Philadelphia, in 1760 and 1762 respectively. The first Black improvement organization in America, the Free African Society, was founded in Philadelphia in 1787 by Richard Allen and Absalom Jones. Seven years later, both Bethel African Methodist Episcopal Church, founded by Allen, and St. Thomas Free African (Episcopal) Church, founded by Jones, were consecrated in their new buildings in Philadelphia. Led by Allen and Jones, Blacks of Philadelphia performed valiant service to the city in caring for the afflicted during the yellow fever epidemic the year before the consecration of the two church buildings.

The first Black denomination, the African Methodist Episcopal (A.M.E.) was formed in Philadelphia in 1816 by delegates from sixteen A. M. E. churches in various states. Moreover, the noted Black Businessman, James Forten (1766-1842) was born in Philadelphia, enlisted in the Continental Navy at the age of fifteen, spent months on a British prison ship after being captured, amassed a fortune in a sailmaking business in Philadelphia, and became one of the largest financial contributors to the abolitionist cause. Under the leadership of Forten and Bishop Allen, Blacks held a mass meeting at Bethel A.M.E. Church in 1817 to protest American Colonization Society proposals to send Blacks back to Africa. These same two leaders also convened in Philadelphia in 1830 the first of the periodic national meetings of Blacks known as the Negro Convention Movement. (continued on page 12)

Appendix C to Opinion

THE PRESIDENT'S MESSAGE
(continued from page 11)

In the atmosphere of this historic city, our 59th annual meeting should be one of the very bes have ever held. Our program chairman, Professor Gossie Hudson of Lincoln University in ssouri, and his hard-working committee, have put together a wealth of interesting sessions t touch on many facets of the Black experience in America. There should be sessions to plea ey palate. Our Executive Director, Dr. J. Rupert Picott, and his dedicated headquarters staf ve made every effort to insure that the convention will run smoothly and that the arrangements ll add to your comfort. We hope that you will enjoy your stay with us at the convention site, e Benjamin Franklin Hotel in downtown Philadelphia.

We need your support, encouragement, and cooperation. We invite you to join the Associatic the Study of Afro-American Life and History (ASALH) if you are not already a member. And we e you to join with us in carrying on the important work begun by Carter G. Woodson in 1915 m he founded this organization to correct misconceptions, to preserve the records, and to in- cate valid accounts of the Black role in American life.

I look forward to seeing you at the convention.

THE ELEVEN PRESIDENTS OF ASALH

Dr. Edgar Allan Toppin, Professor of History, Virginia State College, Petersburg, was electe eleventh president of The Association for the Study of Afro-American Life and History in 1973 he closing session fo the Association's 58th annual meeting at the Commodore Hotel, New t City.

The New York City native, an educator and historian, succeeded Dr. Andrew F. Brimmer, a ber of the Board of Governors, Federal Reserve System, who has recently accepted a pro- or ship at Harvard University. Prior to Dr. Brimmer, nine distinguished Americans headed Association.

The first president of the Association was Dr. George Cleveland Hall, a Chicago, Ill., ician and surgeon, who served in 1915-1917. Dr. Robert Ezra Park, an educator and alist, the only white person to head the Association, was second president from 1917 921.

An active lay member of the A.M.E. Church, John Russell Hawkins, an educator and lawyer, he Association from 1921 until 1933. In 1933, Dr. John Hope, long-time president of house College, Atlanta, Ga., and the founding-president of the Atlanta University System, ame president of the Association, serving until 1936.

Dr. Mary McLeod Bethune, president-founder of Bethune-Cookman College, Daytona Beach, , and adviser to four U.S. presidents, assumed the leadership of the Association in 1936 presided until 1951. Dr. Charles H. Wesley, A.M.E. Church leader, historian and school inistrator, was the Association's head from 1951 until 1965.

In 1965, Dr. Lorenzo J. Greene, a Harvard University and Columbia University trained rian, now a professor at Lincoln University of Missouri, Jefferson City, became the ciation's president for one term. Dr. J. Reuben Sheeler of Texas Southern University, ston, served as the Association's leader in the year of 1966-67.

The Association's current executive director, Dr. J. Rupert Picott, was ASALH president 1967 until 1970, when Dr. Brimmer became leader of the group.

COMMONWEALTH OF PENNSYLVANIA
GOVERNOR'S OFFICE
HARRISBURG

October 24, 1974

GREETINGS:

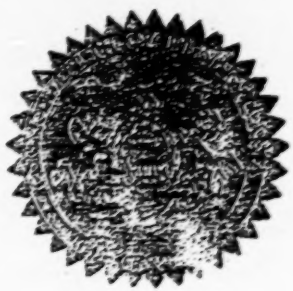
As we begin the Bicentennial celebration of our Nation's birth, our thoughts frequently turn to the achievements of our ancestors.

Although Black Americans played vital roles in the building of this great Nation, they have gone unremembered for many years in our Country's consciousness. It is largely through the work of organizations such as the Association for the Study of the Afro-American History that all Americans, regardless of color, are rediscovering the many valuable accomplishments and contributions of Black Americans throughout the pages of history.

As Governor of the Commonwealth of Pennsylvania, I am pleased to extend my best wishes to the historians, scholars, teachers and students attending the 55th Annual Convention of the Association for the Study of Afro-American Life and History. I sincerely hope that your meeting will be most productive and lead to a more widespread appreciation of our Afro-American heritage.

Milton J. Shapp

MILTON J. SHAPP
Governor



TEMPLE UNIVERSITY

PHILADELPHIA, PENNSYLVANIA 19122

Temple University extends a hand of welcome to the members of The Association for the Study of Afro-American Life and History.

While you are in Philadelphia, we would be pleased to have you visit our campus.

If you have time to see our urban University, please call our Admissions Office at 787-7201.

They'll be happy to arrange a tour for you.

Temple University
A Commonwealth University

Marvin Wachman
President

Cheyney State College is now in its 137th year of acamedic pursuit. Its long history of success and successful graduates make it an institution of which an entire nation must be proud; and it is still growing. Academic and physical growth are continual.

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Graduate Division grants the M.S. or M. Ed. degree in 7 areas
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to overcome
THE
ODDS

CHEYNEY STATE COLLEGE

CITY OF PHILADELPHIA

FRANK L. RIZZO
MAYOR

September 6, 1974

To The Members Of The
Association for the Study of
Afro-American Lifestyle:

I am very pleased to welcome the members of The Association for the Study of Afro-American Lifestyle to the City of Philadelphia at a time when we are engaged in commemorating the beginnings of our great nation and all who contributed to its prosperity and growth.

I am confident that your four day convention in Philadelphia will be very meaningful as you discuss and deliberate the progress of the black American since our nation was founded two hundred years ago.

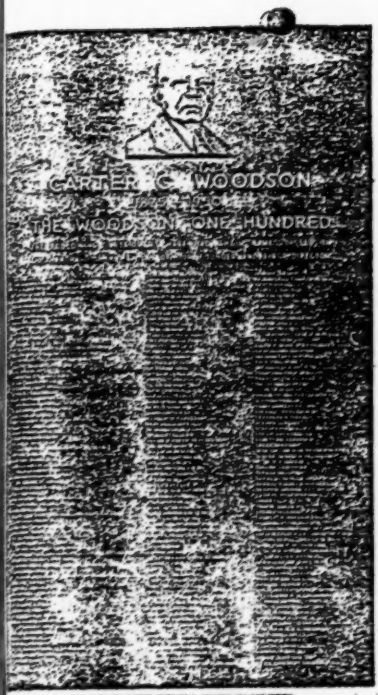
We hope that the appreciation of the contribution of such men as Richard Allen and Absalom Jones, as well as their black contemporaries, will deepen as you seek to increase the knowledge of the total community about their contribution to the freedoms which we prize so dearly.

My warmest best wishes for a fruitful convention.

Sincerely,

FRANK L. RIZZO

FLR/bo



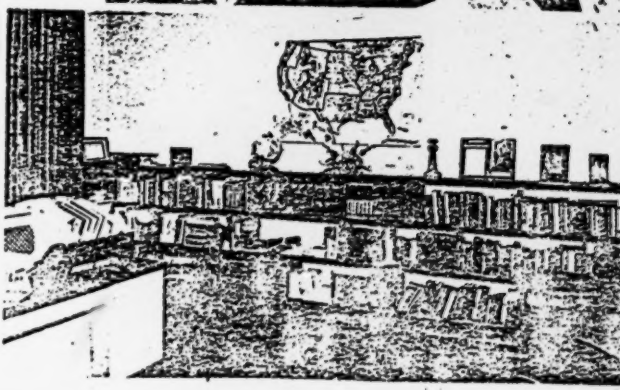
THE CARTER G. WOODSON CENTER
HEADQUARTERS OF
THE ASSOCIATION FOR THE STUDY OF
AFRO-AMERICAN LIFE AND HISTORY
Washington, D. C.

The Association for the Study of Afro-American Life and History, Inc., has been housed in its three story structure at 1401 14th Street, NW, Washington, D. C., since November, 1971. Prior to acquiring the building at 14th Street and Rhode Island Avenue in the near downtown area of the Nation's Capital City, ASALH was located at 1538 9th Street, NW, for the greater part of a half century. Its previous site of operation was on the famous U Street, of uptown Washington, D. C.

The Carter G. Woodson Center, named for the founder of the Association, comprises three well-appointed executive floors and a basement area, suitable for shipping facilities and storage. ASALH also has possession of an adjacent building, where it stores race books and documents and other storing materials.

At left is a photo of the Carter G. Woodson Plaque, which graces the Reception Area of the Center, while the lower picture is that of the first floor Board Room.

Pictures seen on this page include the offices of the Association's Executive Director and Associate for Program and Development, top and bottom photos, respectively. The center photo shows the Rare Book Library, which is located on the second floor along with the aforementioned offices and work areas of other personnel.



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Mrs. Alma Gray Allen
Mrs. Anita T. Anderson
Miss Rosetta Barrett
Miss Charlotte Bell
Mr. Charles Blocksom
Mrs. Alberta Braxton
Mrs. Alider Bryant
Mr. Timothy L. Burris
Rev. Leonard G. Carr
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Mrs. Ethel Clark
Miss Mildred Craig
Rev. John R. Curtis, Jr.
Mrs. Rachel Ellerbee
Mr. Clarence Farmer
Mr. & Mrs. George Fishman
Mrs. Anna Frazier
Mr. John R. Gilmore
Miss Kathryn L. Gilmore
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Mr. Maurice L. Ingraham
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Mr. & Mrs. Clarence John Williams
Mrs. Annette Wright

Symbol of Loyalty, Dependability and Certainty

ASSOCIATION FOR THE STUDY OF AFRO-AMERICAN LIFE AND HISTORY

PHILADELPHIA CONFERENCE COMMITTEES

59th Anniversary Meeting

Mr. Hall | Ms. Brooks | Mrs. Frazier | Ms. Allen | Rev. Licorish

Dr. J. Rupert Picott
General Conference Chairman

Ms. W. Leanna Miles
Conference Coordinator
and
Staff Liaison

Hospitality

Mrs. Anna M. Frazier
Chairman

Ms. Inez S. Brooks
Ms. Alma Allen
Rev. Joshua E. Licorish
Ms. Rachel Ellerbee
Mr. Arthur Hall, III

Souvenir Journal

Mrs. Edyth H. Ingraham
Chairman, Deceased

Mr. Roland E. Johnson
Rev. Joshua E. Licorish
Mrs. Mildred Moore
Mrs. Julia Brooks

Mayor Frank L. Rizzo of Philadelphia was one of a large number of mayors throughout the United States who in 1974 issued proclamations in recognition of Afro-American History. In photo below, a representative of the Mayor's Office presents 1974 proclamation to members of the Philadelphia Branch.

Publicity and Promotion

Mr. William C. Green
Chairman

Ms. Anita Broadwater
Mrs. Rachel Ellerbee
Mr. Roland E. Johnson
Ms. Marcella Jones
Ms. Nanzetta W. Leavy
Ms. Shirley Parham
Ms. Marilyn Porter
Mr. David Riley
Ms. Lille Smith
Mr. Dennis Stavis
Ms. Connie Wilson

Entertainment

Mrs. Margaret G. Holloman
Chairman

Mrs. Margaret Rose Holloman
Mr. Donny Little
Mrs. Mildred Moore

Administrative Support

Mrs. Josephine Shepherd
Chairman

Mrs. Rachel Ellerbee

Tour

Ms. Kathryn L. Gilmore
Chairman

Ms. Rachel G. Whitby
Ms. Evelyn C. Strickland
Ms. Carolyn D. Jackson
Mr. Roland E. Johnson

Transportation

Mrs. Annette Wright
Chairman

Mrs. Alberta J. Braxton

THE HISTORY OF THE PHILADELPHIA CHAPTER OF THE ASSOCIATION FOR THE STUDY OF NEGRO LIFE AND HISTORY

by

JUDGE RAYMOND PACE ALEXANDER

Judge R. P. Alexander

The establishment of the Philadelphia Chapter of the Association for the Study of Negro Life and History (hereinafter ("ASNLH") brings back to my mind some of the many glorious memories of my now rather long and, I must confess, very active life. I look back and see so many truly wonderful people, so many occasions and events that helped shape my own life. Many lovely people, some of whom are no longer living, marked those days in 1929, now forty-one years ago, when we were in correspondence with Dr. Carter G. Woodson and finally when he came to Philadelphia to celebrate the opening of our chapter at an elegant and dramatic meeting in our own home. Dr. Woodson's impressive appearance, his dignified and genteel manner, his culture and eloquence, all interwoven with sincere warmth and simplicity, made it very easy for everyone present to feel his earnestness in the cause of the study of the Black American to which he had devoted his life and to feel entirely "at home" in his presence.

To fully appreciate the difficulty that this first and indeed, the greatest and most renowned and respected black historian in the entire world faced in telling his own countrymen in America and throughout the world that the black man had a history as glorious, as thrilling and as beautiful as that of any race on God's earth, and that the black man in America in order to have self pride and an identity and hope in the future must know of his own origin in Africa and his great contributions to the growth of America, one must know something of this great historian, Carter G. Woodson.

Dr. Woodson was born of slave parents in Virginia in 1875. He was unable to attend school on a regular basis because he had to work long hours to support himself and did not enter college until age 24. But, being possessed of a brilliant, incisive and analytic mind, he earned both his Bachelor's and Master's Degrees at the University of Chicago with very high honors. From Chicago, after teaching for several years, he enrolled at Harvard University and was awarded the

(continued on page 21)

WHY BICENTENNIAL PLANNING MEETINGS LOOKING TOWARD 1976?

The Nation gears itself for the most intense and mammoth celebration in its -- two hundredth birthday. Television, radio, press, and pronouncements of governmental effort on the national, state and local levels remind us daily that all Americans should take a re-look at, and a re-think about, our national heritage in its total frame work and the specific examination of its component parts. The immediate future holds forth the opportunity to reaffirm the spirit and beliefs of the Founding Fathers and, equally, to seek new insights into the basic truths and guiding principles of our nations's past.

The Association for the Study of Afro-American Life and History is the legitimate heir to highlight and present in the most effective means the development of the Black heritage against the backdrop of the national heritage. This is particularly valid in the period between now and the Bicentennial Year. The Association operates on the premise that the Black Heritage is inextricably interwoven with the nation's heritage and shaped by events, movements and causal relationship factors.

It is the un-shirking responsibility of the historian, political scientist, lawyer, economist, psychologist, sociologist, educator, public office-holder, literary writer, artist, and all who term themselves "humanists", to provide the academic yeast for fermenting and presenting this interwoven heritage. These humanists are not to prepeare and present for their specialized audiences - "The historian for the historian, or the legal profession for the legal profession".

It is proposed that the dramatic

(continued on page 22)

ASALH'S PHILADELPHIA BRANCH

coveted degree of Doctor of Philosophy in 1912. It should be briefly stated here that following his University of Chicago studies, he taught for a while in the Philippines and in the high schools of Washington, D.C. In addition, Dr. Woodson was at one time the Dean of the College of Liberal Arts at both Howard University and West Virginia State College.

Dr. Woodson was, among his many attributes, a handsome man, a commanding figure and a brilliant speaker who, although always speaking on the subject closest to his heart, viz: the story of the black man from the earliest recorded history in far away Africa to those of his brethren in America, made his lectures very entertaining by relating his own experiences in Africa and by the use of artifacts and maps. It was during one of his talks as a Visiting Lecturer, under the noted historian, Professor Schlesinger, Sr., at Harvard University, under whom Dr. Woodson studied, that I first met him while I was a student at Harvard. He never came to Cambridge without letting me know during my student days. I spoke on several of his programs. We became at once good friends which lasted until his death in 1950.

When I returned to Philadelphia, a number of Philadelphia teachers, business and professional men and women gathered together at the homes of those of us who were interested in discussing this long, indeed totally neglected, feature of the lives of our people in America, viz: The history of the American Negro. Among those who later, in November 1929, became the founding members of the Philadelphia Chapter of ASNLH were Dr. & Mrs. DeHaven Hinkson, Mr. & Mrs. Walter C. Beckett, both now deceased, Miss Marie Chase and Miss Ella Webb, both long time and highly respected school Principals, Mrs. Viola Keene Carter, Mr. Paul F. Keene, deceased, and his devoted wife, Mrs. Josephine B. Keene, Mrs. Mabel Gates, long time and respected teacher and former President of the Association of Teachers in Colored Schools, Mrs. Rosa Pitts Hurd, Mrs. Ethel Sarjeant, Mrs. A. M. Elizabeth Madison, deceased, Mrs. Rosa Barrett and, the writer of this article and his devoted wife, Dr. Sadie T. M. Alexander.

We shall never forget the drama and excitement of the evening at which Dr. Woodson appeared as our guest to establish the Philadelphia Chapter of this world esteemed organization. Mrs. Alexander and I had not long before this date moved into our "brand new home" at 1708 West Jefferson Street. We had the house in perfect order for this unusual event. Dr. Woodson was our "house guest" for the weekend. There were about 40 guests present to meet him and hear his always interesting presentation. Yes, we went "all out" in providing food and refreshments. Dr. Woodson met and talked informally with groups of guests prior to and during dinner. Finally, we went into a formal meeting for the organization of our chapter. Dr. Woodson acted as temporary Chairman. The writer, Raymond Pace Alexander, was elected President; Dr. DeHaven Hinkson, a well known and highly respected physician, was elected Vice President and Mrs. Verona Beckett was elected Secretary. Thus, the Philadelphia Chapter was born and all of us drank a good strong toast to one of the great chapters of this world esteemed organization.

The writer served as President from 1929 to 1933 and was fol-

(continued on page 22)

BICENTENNIAL PLANNING

aspects of Black life and history in all of its aspects be made the common knowledge and heritage of all Americans, and specifically minority peoples. It is proposed that the Black heritage be portrayed against the nation's heritage throughout the length and breadth of this land. Academic justice, as well as social justice, requires that our Bicentennial efforts reflect the high peaks of our contribution, as well as the shadows of despair. The better the understanding which Black Americans have of their past, and the nation's understanding of that Black heritage will enhance the possibility of our survival as a united, peaceable nation.

What persons are to be included in the Bicentennial planning and celebration? All. When the term "all"? As we gather in Philadelphia, Pennsylvania, October 24, 1974, we shall examine each segment of the Afro-American population, identify Bicentennial roles to be played by each group, generate the dynamism to tell the story anew, chart the future for periodic meaningful appraisals of ASALH Bicentennial Celebration, and examine the ways and means by which our celebration can leave an idelible mark upon the pages of American History.

ASALH'S PHILADELPHIA BRANCH

lowed by the esteemed Dr. DeHaven Hinkson who will be attending our sessions. He served until 1935 and was followed by one of Phi delphia's most respected public school teachers and later a Princi of one of our largest schools, Mrs. Verona Beckett, who served for long and successful years. It was during those years that we held nual dinner meetings during Negro History Week and our growth a interest mounted greatly. Our next longest term of Presidency was co ferred on our devoted and dedicated Mrs. Edyth H. Ingraham w served from 1955 to 1965 when she was elected to the Board of D rectors of ASNLH. Mrs. Ingraham is now Executive Director of t Philadelphia Chapter of ASNLH and is one of the most active perso in our entire organization, visiting several chapters throughout the cou try. From 1965 to 1967 the Reverend John Custis, President of t New Era Theological School, became our President, and now at t 55th Annual Convention of this great Association, we are honored have as our President one of our most devoted members, Mrs. Marga G. Holoman, of the Philadelphia School System.

Dr. Carter G. Woodson stood as a giant among the scholars world history — black and white. His contributions to historical tru about the races of mankind and their contributions to civilization c more than any historian to shatter the dreadful and harmful myths a fantasies so widely held about the inferiority of people of dark skin th any man in his field. To the black man in the world, his work was valuable to us as the findings of the world famous geneticists, archaeol gists and biologists who shattered the theory that there are inferior a superior races of mankind.

Dr. Woodson lived a selfless and disciplined life. His work w extremely confining and lonely. Scholarly writing and research a merely synonyms for sacrifice. What a legacy he left when he left this full story of his life at his death in 1950! And what a challenge the black youth of today — in 1970 — and to the black students college and the black teachers in our schools throughout the world reach the heights of perfection in further study and research in Bla World History attained by this truly great Black American.

RAYMOND PACE ALEXANDER

THE EDUCATIONAL EQUALITY LEAGUE
Philadelphia, Pennsylvania

An abridged account based upon a book currently being written by Floyd L. Logan, founder and president of The Educational Equality League. The Educational Equality League was organized on January 2, 1932 as the former "Citizens' Committee of Fifteen" to protest a radically deroga tory social science textbook entitled, "Problems of American Democracy." This textbook was in use in high schools throughout Philadelphia. As a result of an intensive campaign of protes coupled with the tremendous amount of support from both the general news media and a large segment of the local citizenry, the textbook was removed from the approved list of textbooks. This historical event occurred on January 27, 1932. Since that time, the League has reflected a "watchdog" image in its struggle "to obtain and safeguard educational opportunities for all peoples regardless of race, color, religion, or national origin..." Currently in its thirty-nin year of existence, the League has established an impressive record.

Black Americans in Cleveland was introduced in the Ohio city, May 2-4, 1974 at ceremonies in which Mayor Ralph J. Perk, center above, inaugrated activity by accepting first-print copy of the book from native Clevelander Russell H. Davis, 2nd from right, a retired educator. Observing from left are Cleveland Call & Post Editor - Publisher William O. Walker, Ms. W. Leanna Miles, Associate for Program and Development, The Association for the Study of Afro-American Life and History and Moss H. Kendrix, far right, ASALH Consultant for Communications and Public Affairs. First-copy issues of Mr. Davis' book were also received by Cleveland history-makers, Congressman Louis Stokes, his brother former Mayor Carl Stokes and Mr. Walker, each of who is mentioned prominately in the Davis work. The book covers the history of black Clevelanders from 1769, when George Peake became the city's first Afro-American settler, to 1969, when Mayor Stokes entered his second term as Cleveland's first black chief executive. Associated Publishers, Inc.: Hard-cover, $7.95 + .34 postage soft-cover, $4.95 + .34 postage. 1401 Fourteenth Street, NW, Washington, D.C. 20005.

Booker T's Child

Life and Times of Portia Marshall Washington-Pittman

By Roy L. Hill
McDaniel Press
P. O. Box 145
Brockport, N. Y. 14420

$7.95

BLACK PERSPECTIVE IN PENNSYLVANIA
by Bob Taylor and Lawrence D. Reddick

DID YOU KNOW

1. That the first special legislative action pertaining to Blacks in Pennsylvania was an ordinance passed by the City Council of Philadelphia in 1693 "against tumultous gatherings of Blacks of the old town of Philadelphia on the first day of the week."

2. That Black men were in Pennsylvania before William Penn? Penn, "the founder," arrived in 1693; Black Anthony Swart arrived in 1682.

3. That the great idealist, William Penn, owned slaves? Not many; he treated them kindly; but he preferred Black slaves to white indentured servants. The former could be kept for life.

4. That Benjamin Franklin, the worldly-wise philosopher, diplomat and businessman, advertised slave sales in his newspaper the Pennsylvania Gazette. See, for example, the issue of September 4, 1740. Later in life, a few years before his death, Franklin became leader in the successful fight to abolish slavery in Pennsylvania.

5. That Black workers helped lay the foundations for Philadelphia and its prosperity? In addition to clearing much of the land, they were masons, carpenters, joiners, iron workers, millers, shoemakers, printers, sailmakers, even fiddlers.

6. That there was once some 5,000 slaves in and about Philadelphia? Check the figures for 1760.

7. That the land on which the Mother Bethel Church stands is one of the oldest pieces of property in America that Blacks have owned continually? It was acquired in 1787.

8. That Blacks had their own self-help, mutual aid societies as early as 1787? This was the Free African Society.

9. That in 1790 there were 6,537 free persons of color residing in Pennsylvania?

10. That Blacks helped save some thousands of lives during the Yellow Fever epidemic of 1793? Richard Allen and Absolom Jones not only volunteered their personal help, but also urged the participation of the Black community?

11. That a Black volunteer fire company was formed in Philadelphia in 1810, (it put out fires in all neighborhoods).

(continued on page 25)

BLACK PERSPECTIVE IN PENNSYLVANIA
(continued from page 24)

12. That during the war of 1812 a Black battalion was recruited in Philadelphia.

13. That Philadelphia was the birthplace of the Black convention movement? From 1815 to 1860 national regional and state conventions met and plotted and planned strategy against slavery and inequality.

14. That in 1822 the first public school for Blacks in Philadelphia opened at 6th Street near Lombard. It was the James Forten School.

15. That a Black physician and dentist were reported in the Register of Trades in Philadelphia as early as 1838.

16. That in 1838 there were ten private schools in Philadelphia conducted by Black teachers.

17. That in 1838 the Registry of Trades in Philadelphia listed 344 Blacks - 133 women and 211 men - who were self-employed as barbers, vendors, dressmakers, shoemakers and various other trades.

18. That the first Black newspaper in Philadelphia was started in 1841 by Robert Purvis (and others), who published the "Demosthenian Shield".

19. That before the Civil War there were proportionally more businesses owned by Blacks in Philadelphia than there are today?

20. That as late as 1865 Blacks were not permitted to ride the street cars of the city and were often assaulted for attempting to do so?

21. That prior to the Civil War may Blacks made use of their homes as stations for the Underground Railroad?

22. That in 1871 Octavious V. Catto, a respected Black school teacher, was murdered during a race riot?

23. That the Berean Presbyterian Church of Philadelphia was founded in 1880 and the Berean Manual Training School in 1899?

24. That the first Black person to win a Ph.D. in Pennsylvania was Lewis B. Moore? He won his in 1896 from the University of Pennsylvania.

25. That the first Black woman to win a Ph.D. in Pennsylvania (or in the U.S.A.?) was Mrs. Sadie T. M. Alexander. She won hers from the University of Pennsylvania in 1921?

26. That James Forten, a Black man made a fortune in Shipbuilding and shipping but used most of his money to fight slavery and discrimination?

27. That there is no monument in all Pennsylvania of a Black revolutionary or militant?

YUCCA PLANTATION "MELROSE"
Melrose, Louisiana

Beyond The Fireworks Of 76

The Afro-American Bicentennial Corporation is a private, non-profit organization established in December of 1970 for the purpose of developing and implementing projects for the forthcoming Bicentennial which will express the desires and meet the needs of Black Americans in line with the expressed principles and ideals of the American Revolution.

The guiding concensus of ABC's Directors and its distinguished board of advisors is that the Bicentennial be viewed by Black Americans as a timely and appropriate vehicle for addressing many of the problems still faced by millions of this nation's poor, Black and Brown citizens. Thus, the projects and programs being fosterd by ABC are those promising long-term social, economic and physical residuals for "beyond the fireworks of 1976."

One project which reflects our efforts to date is a three-year nation-wide study to identify and evaluate historic sites associated with Black contributions to the development of America. This project is funded by the U.S. Department of the Interior, National Park Service.

As a result of our first year's efforts, the following thirteen sites have been designated as National Historic Landmarks:

- Dexter Avenue Baptist Church - Montgomery Alabama
- Ida B. Wells-Barnett House - Chicago, Illinois
- Fort Des Moines, Provisional Army Officer Training School - Des Moines, Iowa
- Yucca Plantation, "Melrose" - Melrose, Louisiana
- Port Hudson - Port Hudson, Louisiana
- Paul Cuffe Farm - Westport, Massachusetts
- Harriett Tubman Home for the Aged - Auburn, New York
- Colonel Charles Young House - Wilberforce, Ohio
- Mother Bethel A.M.E. Church - Philadelphia, Pennsylvania
- Site of the Battle of Rhode Island - Portsmouth, Rhode Island
- Robert Smalls House, - Beaufort, South Carolina
- Stono River Slave Rebellion Site - Rantowles Vicinity, South Carolina
- Fort Pillow - Fort Pillow, Tennessee

We would appreciate any suggestion or information on potential sites which, in your opinion, would furthur enhance this most important study.

For further information Contact:

Afro-American Bicentennial Corporation
1420 N Street, N.W. / Suite 101 / Washington, D. C. 20005 / (202) 462-2519

SCHOOL DISTRICT OF PHILADELPHIA OFFICE OF CURRICULUM AND INSTRUCTION
DIVISION OF AFRICAN AND AFRO-AMERICAN STUDIES

SUMMARY OF ACTIVITIES AND ACCOMPLISHMENTS
1973 - 1974

By William C. Green

I. Outstanding Accomplishments of the Division of African and Afro-American Studies During the School Year (1973-).

A. Prepared a teachers guide for elementary school teachers, Perspectives on the Teaching of Afro-American Studies in the Elementary Schools. Copies were made available to each of the schools in the School District of Philadelphia.

B. Scheduled the visits of Mrs. Frances Sampson, a special resource person in African History and Culture, to 120 Title #1 schools, resulting in a very successful enrichment program. Approximately, 12,000 students and 500 teachers benefited directly from her services.

C. Established two classes in Afro-American Studies for teachers involved in the school district certification program. Eighty teachers were involved in the project for two hours a week during a fifteen week course.

D. Initiated a series of staff development sessions in Afro-American studies on a sustained basis at Huey, Longstreth, and Pastorius Elementary schools.

E. Contacted and arranged for the participation of Philadelphia School District teacher on two panels as part of the 59th Annual Convention of the Association for the Study of Afro-American Life and History to be held at the Benjamin Franklin Hotel, October 27, 1974.

F. Contacted and arranged for the participation of five students from secondary schools in Philadelphia to participate on a special Youth Panel during the 59th Annual Convention of the Association for the Study of Afro-American Life and History. This will be the first time during a convention which high school students will be active participants.

G. Staff members were selected by the national office of the Association for the Study of Afro-American Life and History to publicize the forthcoming 59th Annual Convention.

H. Provided leadership and instructional materials for students and teachers involved in the A.I.D. Program (Achievement for Individual Development. A total of fourteen junior high schools were visited.

II. Special Services Performed by the Office of African and Afro-American Studies

A. Individual Districts

1. Conducted staff development programs in the Afro-American Resource Centers locates in Districts #1,2,3,4,5,6, and 7. A total of 200 teachers were involved.

(continued on page 29)

2. Met with the administrative and supervisory staff in Districts 2, 3, 4, and 5 to discuss various aspects of the Afro-American History program, and to deal with specific problems or concerns.

3. Helped to develop a Filmstrip/Tape Orientation Program which will introduce the Afro-American Resource Center in District #7 to teachers, pupils and administrators in that district.

4. Took part in the dedication ceremony which changed the name of the District #5 Afro-American Studies Resource Center to the Edyth H. Ingraham Afro-American Studies Resource Center.

B. Individual Schools

1. The two staff members of the Office of Afro-American Studies made a total of 285 visits to 149 individual schools during the 1973-73 school year as a part of our staff development emphasis.

2. Prepared materials for teachers to commemorate the following special occasions.

   a. Martin Luther King's Birthday Observance.

   b. Afro-American History Week

3. Participated in the International Folk Festival sponsored by the Sheridan School.

4. Participated in the African History and Culture Program sponsored by the Morton School.

5. Conducted classes in African history and culture at Tilden Junior High School, Benjamin Franklin High School and Edison High School.

6. Established a communications network with target area schools by providing information and materials to a contact in each school. The teacher was selected by the principal.

C. Other Division or Activities

1. Met on several occasions with Arthur Hall, Director of the Ile Ife Museum of Afro-American Culture, to develop a proposal which would provide for an Alternative Education Program in two elementary and two secondary schools in the School District of Philadelphia. The proposal seeks funding for such a project.

2. Cooperated with the World Affairs Office in presenting a conference on Afro-Americans which was attended by 160 teachers and administrators.

3. Coopoeration with Action Library at 20th & Christian Street:

   Meetings with staff members of Action Library helped them to write curriculum in African-American studies based on the guidelines of our

office. The eight teachers of Action Library taught Black history in eight different schools according to when they had worked out together.

4. Served as consultant for minigrant in African-American studies. Consulted with teacher in charge every Monday morning until she was well started in carrying out the project.

5. Set up a Black Studies program at Holmesburg Prison and House of Correction on the request of an inmate who wrote to the office for such help. Ongoing program is now taking place, which involves office personnel and other resource people in the community who are participating in black studies programs. These programs take place during evenings and on Saturdays.

6. Attended meetings with the staff of Network, a group of community organizations who work with gangs to discuss Black history curriculum as it relates to combating gang problems.

7. The office has initiated a continuous series of contact with Cheyney, Temple, the University of Pennsylvania and other institutions of higher learning which are involved in program planning and curriculum development in Black Studies.

8. Participated in evening meetings with mothers in North Philadelphia to offer Black history experiences in an attempt to counteract gang problems.

9. Provided leadership at the following conferences, directly related to Afro-American history.
   a. Association for the Study of Afro-American Life and History-New York

SCHOOL DISTRICT OF PHILADELPHIA OFFICE OF CURRICULUM AND INSTRUCTION
DIVISION OF AFRICAN AND AFRO-AMERICAN STUDIES

(continued from page 28)

   b. African Heritage Studies Association-New York
   c. Criminal Justice Conference - Pittsburgh, Pennsylvania

10. Provided support and help to individual teachers who sought funds to develop an Afro-American history project in the classroom.

11. Participated in a series of planning sessions for the creation of an Afro-American History Museum which will be highlight of the Bicentennial to take place in Philadelphia in 1976.

12. Involved in helping to develop a proposal for an Ethnic Studies Program in cooperation with the Social Studies Division.

13. Prepared a list of resources for the Pedagogical Library to enlarge the list of references and other instructional materials in African and Afro-American Studies.

14. Prepared curriculum materials in Afro-American Studies which emphasized values and social science concepts are stressed.

15. Involved the community in participation in Afro-American Studies through teaching and discussion.
   a. Urban League Youth Council
   b. Late Start Senior Citizens Program
   c. Haverford Police-Community Relations Group

16. Participated in two programs involving the staff of the Office of Home-School Coordinators Services.

17. Responded to the requests of individual teachers and school districts for help in initiating and improving their program in Afro-American Studies.

notes

49th ANNUAL OBSERVANCE
AFRO-AMERICAN HISTORY WEEK

February 9-16, 1975

GENERAL THEME: FULFILLING AMERICA'S PROMISE

Daily Discussion Topics

Sunday, February 9 - The Bicentennial and the Afro-American

Monday, February 10 - Employment and The Black American

Tuesday, February 11 - Politics and Power: Afro-American Leadership

Wednesday, February 12 - Education: Today and Tomorrow Requisite

Thursday, February 13 - Behavior Patterns: Afro-American Dilemma

Friday, February 14 - Housing: Citizen Challenge

Saturday, February 15 - Local Historic Sites and Monuments

Sunday, February 16 - Religion - Our Nation's Heritage

THE BLACK EXPERIENCE 1975 1976

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APPENDIX C.

IN THE
UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CIVIL ACTION No. 71-2698

COMMONWEALTH OF PENNSYLVANIA

—and—

RAYMOND WILLIAMS, ET AL.

v.

LOCAL UNION 542, INTERNATIONAL UNION OF OPERATING ENGINEERS, ET AL.

ORDER OF DECEMBER 4, 1974.

AND Now, this 4th day of December, 1974, after consideration of the Motions for Disqualification filed by defendants, Local 542, International Union of Operating Engineers, the Contractors Association of Eastern Pennsylvania, and the General Building Contractors Association, Inc., it is hereby ORDERED and DECREED that said motions are DENIED.

By THE COURT:

A. LEON HIGGINBOTHAM, *J.*

APPENDIX D.

IN THE
UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 74-2281

LOCAL 542, INTERNATIONAL UNION OF OPERATING ENGINEERS,

Petitioner,

v.

THE HONORABLE A. LEON HIGGINBOTHAM, JR., JUDGE OF THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA,

Respondent.

Present: ALDISERT, WEIS and GARTH, *Circuit Judges.*

ORDER OF DECEMBER 30, 1974.

Upon consideration of the Petition for Writ of Mandamus and/or Prohibition, it is

ORDERED that the Petition be and the same is denied.

By THE COURT,

ALDISERT,
Circuit Judge.

Dated: December 30, 1974

APPENDIX E.

IN THE
UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 74-2281

LOCAL 542, INTERNATIONAL UNION OF OPERATING ENGINEERS,
Petitioner,

v.

THE HONORABLE A. LEON HIGGINBOTHAM, JR., JUDGE OF THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA,
Respondent.

ORDER OF JANUARY 15, 1975 SUR PETITION FOR REHEARING.

Present: SEITZ, *Chief Judge,* and VAN DUSEN, ALDISERT, ADAMS, GIBBONS, ROSENN, HUNTER, WEIS and GARTH, *Circuit Judges.*

The petition for rehearing filed by
Petitioner

in the above entitled case having been submitted to the judges who participated in the decision of this court and to all the other available circuit judges of the circuit in regular active service, and no judge who concurred in the decision

having asked for rehearing, and a majority of the circuit judges of the circuit in regular active service not having voted for rehearing by the court in banc, the petition for rehearing is denied.

By THE COURT,
ALDISERT,
Judge.

Dated: January 15, 1975

APPENDIX F.

IN THE
UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CIVIL ACTION No. 71-2698

COMMONWEALTH OF PENNSYLVANIA, ET AL.

v.

LOCAL UNION 542, INTERNATIONAL UNION OF OPERATING ENGINEERS, ET AL.

ORDER.

Before HIGGINBOTHAM, *J:*

AND Now, this 6th day of February, 1975, it is ORDERED

Defendant's Motion For Stay of Proceedings is DENIED and DISMISSED.

ATTEST: OR By THE COURT:

By: .....

Deputy Clerk.

(Name Illegible)

Judge

Civ 12—3/74

APPENDIX G.

IN THE
UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

February 14, 1975

No. 74-2281

LOCAL 542, INTERNATIONAL UNION OF OPERATING ENGINEERS,

Petitioner

v.

THE HONORABLE A. LEON HIGGINBOTHAM, JR., JUDGE OF THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA,

Respondent

Present: ALDISERT, WEIS and GARTH, *Circuit Judges.*

---

1. Petitioner's motion for stay of all further proceedings in the United States District Court for the Eastern District of Pennsylvania, in the matter of Commonwealth of Pennsylvania and Raymond Williams, et al. v. Local 542, International Union of Operating Engineers, et al., Civil Action No. 71-2698, pending action by the Supreme Court of the United States upon Petition for Certiorari,

2. Copy of this Court's order dated December 30, 1974, denying Petition for Writ of Mandamus and/or Prohibition, sent by the undersigned for the Court's information,

3. Copy of this Court's order dated January 15, 1975, denying petition for rehearing, sent by the undersigned for the Court's information, in the above-entitled case.

Respectfully,

T. F. QUINN,

Clerk.

enc.
fm

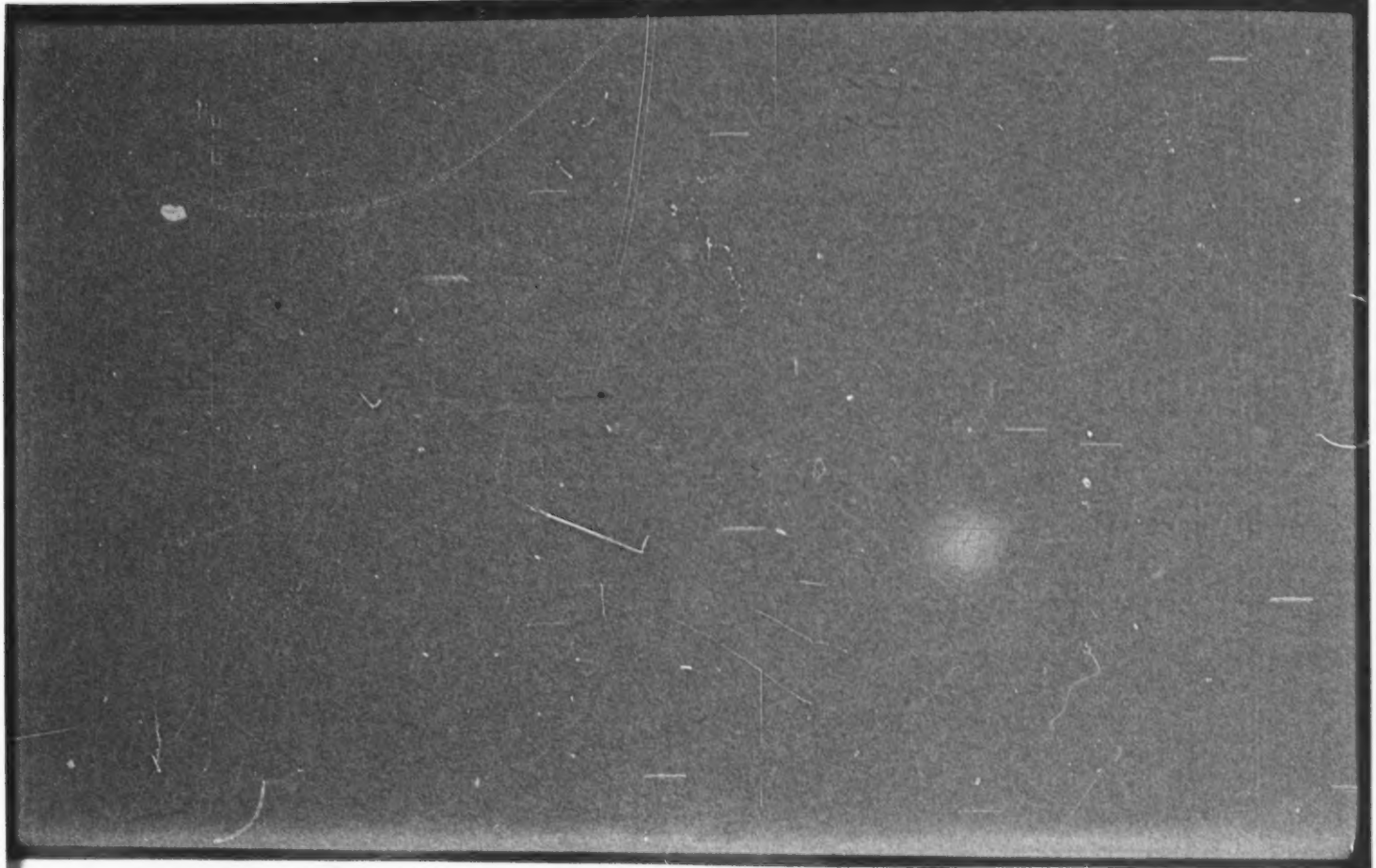
The foregoing Motion for a stay of all further proceedings in the United States District Court is denied for want of jurisdiction in this court.

By THE COURT,

ALDISERT,

Judge.

Dated: February 25, 1975



LIBRARY
SUPREME COURT, U. S.
MAY 8
MICHAEL RODAK, JR., CLERK

In the Supreme Court of the United States

October Term, 1974
No. 74-1272

LOCAL 542, INTERNATIONAL UNION OF OPERATING ENGINEERS,
Petitioner

vs.

THE HONORABLE A. LEON HIGGINBOTHAM, JR., Judge of the United States District Court for the Eastern District of Pennsylvania,
Respondent

and

COMMONWEALTH OF PENNSYLVANIA and RAYMOND WILLIAMS et al.,
Respondents

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit.

BRIEF FOR RESPONDENTS IN OPPOSITION

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IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1974
No. 74-1272

LOCAL 542, INTERNATIONAL UNION OF OPERATING ENGINEERS,
Petitioner

vs.

THE HONORABLE A. LEON HIGGINBOTHAM, JR., Judge of the United States District Court for the Eastern District of Pennsylvania,
Respondent

and

COMMONWEALTH OF PENNSYLVANIA and RAYMOND WILLIAMS et al.,
Respondents

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit.

BRIEF FOR THE RESPONDENTS IN OPPOSITION

I. QUESTIONS PRESENTED

1. Was the District Court correct in denying Petitioner's motion for disqualification on the ground that the facts alleged were not legally sufficient under 42 U.S.C. §144?

2. Was the District Court correct in holding that disqualification was not justified in light of this Court's decision in *Berger v. United States*, 255 U.S. 22 (1921)?

3. Did the decision of the Court of Appeals denying a writ of mandamus/prohibition create a conflict of case law among the circuits?

II. COUNTER-STATEMENT OF THE FACTS

The action underlying this controversy was brought by the Commonwealth of Pennsylvania and individual and similarly situated class plaintiffs under various civil rights laws[1] challenging the Petitioner's and other named and class defendants' alleged policy of discriminating in employment against Blacks. *Commonwealth of Pennsylvania and Raymond Williams et al. v. Local 542, International Union of Operating Engineers, AFL-CIO et al.* (E.D. Pa., Civil Action No. 71-2698).

After three years of protracted pretrial procedure involving numerous delays, the trial was finally scheduled to commence on December 16, 1974. Prior thereto, on November 15, 1974, on the eve of the final pretrial conference, the Petitioner moved to disqualify the trial judge, Respondent herein, pursuant to 28 U.S.C. §144 (App. A-1). Accompanying that motion was an affidavit which alleged the following facts: that the trial judge, the Honorable A. Leon Higginbotham, Jr., on October 25, 1974, addressed the annual meeting of the Association for the Study of Afro-American Life and History, Inc.; that

[1] Title VI of the Civil Rights Act of 1964, 42 U.S.C. §2000d, et seq.; Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e, et seq.; 42 U.S.C. §§1981, 1983, 1985(3); Labor Management Relations Act of 1947, 29 U.S.C. §185; U. S. Constitution, Thirteenth and Fourteenth Amendments; Pennsylvania Human Relations Act, 43 P.S. §951, et seq.

during the course of his address, Judge Higginbotham said:

> Today, I do not see the [Supreme] Court of the 1970's or envision the Court of the 1980's as a major instrument for significant change and improvement in the quality of race relations in America.
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> * * *
>
> . . . As I see it, we must make major efforts in other forums without exclusive reliance on the federal legal process (Pet. at 4).

Petitioner further alleged that Judge Higginbotham's appearance and the above quotation were publicized by the *Philadelphia Inquirer,* a newspaper of general circulation (Pet. at 4).

It was upon these factual allegations alone that the Petitioner based its motion for disqualification; from them, the Petitioner concluded that Judge Higginbotham had demonstrated a personal bias or prejudice against it.

On December 4, 1974 Judge Higginbotham entered an opinion (Pet. App. A-2 to A-143) and order (Pet. App. A-144) denying the motion for disqualification, holding that Petitioner had not alleged facts which were legally sufficient to require recusal.

Thereafter, Petitioner applied to the Court of Appeals for the Third Circuit for a writ of mandamus and/or prohibition. After due consideration, the Court of Appeals entered an order, dated December 30, 1974 denying the petition for the writ (Pet. App. A-145). Petitioner then moved the Court of Appeals

for reconsideration, which was denied in an order, dated January 15, 1975 (Pet. App. A-146 to A-147). Subsequently, Petitioner moved the District Court for a stay of proceedings pending determination by this Honorable Court of its petition for writ of certiorari. The District Court entered an order, dated February 6, 1975 (Pet. App. A-148) denying that motion. Petitioner then moved the Court of Appeals for a stay, which was denied "for want of jurisdiction" in an order, dated February 25, 1975 (Pet. App. A-149 to A-150). Thereafter, Petitioner requested Mr. Justice Brennan, as the Circuit Justice, for a stay, which was also denied in an order dated March 25, 1975.

Finally, on April 9, 1975, Petitioner filed the instant petition for writ of certiorari.

III. REASONS FOR DENYING THE WRIT

A. The Decision of the District Judge Below Was Correct

It is settled law that the mere filing of an affidavit in support of a motion to disqualify, filed pursuant to 28 U.S.C. §144, does not *ipso facto* require recusal. *Berger v. United States*, 255 U.S. 22 (1921); *United States v. Townsend*, 478 F. 2d 1072, 1073 (3rd Cir. 1973). Rather, the statute imposes a duty upon the courts to determine whether the facts asserted in the affidavit give "fair support to the charge of a bent of mind that may prevent or impede impartiality of judgment." *Berger*, supra, 255 U.S. 33-34. The statute thus requires a judicial determination of whether the facts, which must be accepted as true, justify the affiant's—here the Petitioner's—belief that the judge who is to try the case is biased or even has the appearance of bias. *Berger*, supra, 255 U.S. 36; *Parrish v. Board of Commissioners of Alabama State Bar*, 505 F. 2d 12, 20-21 (5th Cir. 1974).

Disqualification, as a matter of law, is not warranted if it is grounded on mere conclusions. *United States v. Townsend*, supra, 478 F. 2d at 1074; *Inland Freight Lines v. United States*, 202 F. 2d 169, 171 (10th Cir. 1953). Furthermore, recusal is not required if the facts pled in the affidavit are based on the background and associations of the judge, rather

than on his specific appraisal of a party before him. *Parker Precision Products Co. v. Metropolitan Life Insurance Co.*, 407 F. 2d 1070, 1077-78 (3rd Cir. 1969); *Price v. Johnston*, 125 F. 2d 806, 811 (9th Cir.), *cert. denied*, 316 U.S. 677 (1942).[2] Nor can a judge "be disqualified merely because he believes in upholding the law." *Baskin v. Brown*, 174 F. 2d 391, 394 (4th Cir. 1949). In short, the motion for disqualification must be legally sufficient in order to justify recusal, *Berger*, supra. When it is not, "a federal judge has a *duty* to *sit* where *not disqualified*, which is equally as strong as the duty to *not sit* where *disqualified*." *Laird v. Tatum*, 409 U.S. 824, 837 (1972) (per Mr. Justice Rehnquist) (emphasis in original).[3]

Consistent with that principle, the District Court properly decided to "sit" in this case. A careful analysis of the facts contained in the Petitioner's recusal motion does not even remotely support the

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[2] "[A judge] must have neighbors, friends and acquaintances, business and social relations, and be part of his day and generation . . . the ordinary results of such associations and the impressions they create in the mind of the judge are not the 'personal bias or prejudice' to which the statute refers." *United States v. Gilboy*, 162 F. Supp. 384, 400 (M.D. Pa. 1958), quoting *Ex Parte N. K. Fairbank Co.*, 194 F. 978, 989-90 (M.D. Ala. 1912).

[3] Mr. Justice Rehnquist's opinion in *Laird v. Tatum*, supra, contains an extended discussion of instances where Supreme Court Justices refused to disqualify themselves from cases where they arguably were prejudiced or biased. *Laird v. Tatum* involved disqualification under 28 U.S.C. §455.

Petitioner's conclusion that Judge Higginbotham is biased or partial against Local 542.[4]

The motion itself was predicated primarily on three factors: (1) that Judge Higginbotham was Black; (2) that he attended and addressed the annual meeting of the Association for the Study of Afro-American Life and History, Inc. (hereinafter "ASALH"); and (3) that the contents of his address revealed an attachment to the Black civil rights movement in America.

Each of these allegations, individually or cumulatively, are not legally sufficient to warrant recusal under 28 U.S.C. §144. First, the fact that Judge Higginbotham is Black is in and of itself insufficient to imply that he is or would be biased in trying a civil rights case. Second, his presence and speech before the ASALH is equally immaterial to the grant or denial of the disqualification motion. *Parker Precision Products Co.*, supra; *Price v. Johnston*, supra. Third, as to the contents of the speech, Judge Higginbotham never once referred to any of the parties to this litigation, the lawsuit itself, or employment discrimination generally. What the speech represented were the Judge's views on how racial equality can best be achieved in the United States without sole reliance on the judiciary. The restraints imposed by law were recognized and nothing illegal was proposed. A

[4] It is interesting to note that the other defendants to this litigation, who had initially joined with Local 542 in its recusal petition, have now declined to press on with this continued attempt to remove Judge Higginbotham from the case.

judge cannot be disqualified based upon remarks such as these, remarks which ultimately represent his fidelity to law enforcement and decisions of this Court. *Knapp v. Kinsey*, 232 F. 2d 458 (6th Cir.), *rehearing denied*, 235 F. 2d 129, *cert. denied*, 352 U.S. 892 (1956); *Baskin v. Brown*, supra, 174 F. 2d at 394.

None of the Petitioner's factual assertions support the inference that Judge Higginbotham has a "manifestly closed mind on the merits of the case." *United States v. Grinnel Corp.*, 384 U.S. 563, 583 (1966). To the contrary, the Judge's remarks reveal an impartiality that transcends his background (i.e., his race) and his associations (i.e., his affiliation with the civil rights movement). Under these circumstances, recusal was not warranted and Judge Higginbotham had a duty to continue sitting on this case, *Laird v. Tatum*, supra.

B. The Decision Below Does Not Conflict With This Court's Decision in Berger v. United States, 255 U.S. 22 (1921)

The Petitioner's request for the issuance of the Writ alleges that the failure of Judge Higginbotham to disqualify himself directly conflicted with the Court's decision in *Berger*, supra. That argument is specious.

In *Berger*, the parties seeking disqualification of the trial judge were German-Americans who were being tried under the Espionage Act of 1917. Their affidavit supporting recusal alleged that the Honorable Kenesaw Mountain Landis had made statements

to the affect that all German-Americans were disloyal to the United States. *Berger*, supra, 255 U.S. at 28-29. It was also alleged that Judge Landis described other German-American defendants before him as "reeking with disloyalty", *id.* From these statements it was reasonable to infer that German-American defendants in criminal prosecutions under the Espionage Acts might not receive a fair trial from Judge Landis. *Cf. United States v. Townsend*, 478 F. 2d 1072 (3rd Cir. 1973).

The instant factual situation is clearly distinguishable from *Berger*, supra. Petitioner did not allege, nor could it, that Judge Higginbotham's remarks referred to the litigants before him personally, or as members of a class for which he had personal animus. Furthermore, Judge Higginbotham's statements when specifically analyzed in the context of the litigation pending before him lend support to an inference of impartiality; i.e. personal commitment to the advancement of civil rights tempered by proper judicial restraint.

Contrary to Petitioner's assertion, the decision to deny the motion for disqualification is not in conflict with this Court's decision in *Berger v. United States*, supra.

C. This Case Does Not Present a Conflict Among the Circuits for This Court To Resolve

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The Petitioner would have this Court issue the Writ on the purported ground that the decision of the Third

Circuit Court of Appeals, denying their petition for a writ of mandamus and/or prohibition, created a conflict among the circuits. Specifically, the Petitioner contends that the Third Circuit refused to review the District Court's order denying recusal because it lacked jurisdiction to do so. This ruling, the Petitioner concludes, conflicts with decisions of a majority of the circuits holding that there is jurisdiction under the All Writs Statute, 28 U.S.C. §1651, to review a denial of a motion for disqualification.

Because the factual predicate of the Petitioner's argument is mistaken, this case presents no conflict among the circuits for this Court to resolve. Contrary to the contention of the Petitioner, the Third Circuit did not deny their mandamus/prohibition petition on jurisdictional grounds. Its order stated:

> *Upon consideration* of the Petition for Writ of Mandamus and/or Prohibition, it is
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> ORDERED that the Petition be and the same is *denied.* (Emphasis added.) (Pet. App. A-145)

If the Court of Appeals had dismissed the petition for want of jurisdiction, as Petitioner asserts, it would have so stated as it did in the denial of the motion for a stay of proceedings pending determination of a writ of certiorari (Pet. App. A-149 to A-150).

Petitioner argues that in not holding a hearing, the Court of Appeals denied Petitioner due process under the Fifth Amendment (Pet. at 6-7). This argument is totally frivolous. This Court has specifically held that under 28 U.S.C. §144 the only judicial decision to be made is one of law; the alleged facts must

be assumed as true and no evidentiary hearing is permitted. *Berger*, supra, 255 U.S. at 365. If, on the other hand, the Petitioner contends that it was denied due process of law by the refusal of the Court of Appeals to permit oral argument in this case, their argument would be equally futile. *See F.C.C. v. WJR, The Goodwill Station*, 337 U.S. 265, 276 (1949); *accord, NLRB v. Local No. 42, International Association of Heat and Frost Insulators and Asbestos Workers*, F. 2d , 16 F.R. Serv. 2d 1583 (3rd Cir. 1973).[5]

In sum, the manner in which the Court of Appeals disposed of the petition for mandamus and/or prohibition presents no question for review by this Court. This Court should refuse to issue a writ of certiorari on that ground.

IV.
CONCLUSION

The instant petition for writ of certiorari, when gleaned in terms of the issues presented by an accurate statement of the facts, presents no novel or difficult question for resolution by this Court.

Judge Higginbotham's refusal to recuse himself was correctly based on a long line of precedents following

[5] In fact, because of the need for expeditious decision on a petition for writ of mandamus and/or prohibition, Rule 21(b) of the F. R. App. Proc. provides: "If the court is of the opinion that the writ should not be granted, it shall deny the petition", without waiting for the respondent to file an answer.

this Court's decision in *Berger*. It has been reviewed by the Court of Appeals for the Third Circuit, which properly affirmed. It is respectfully submitted therefore, that the petition for writ of certiorari should be denied.

Respectfully submitted,

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No. 74-1272.

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Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit.

PETITIONER'S RESPONSE TO OPPOSITION.

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The Petition for Certiorari states in the clearest terms that the Trial Judge should have disqualified himself because, in his public address, he showed an active personal participation in the advancement of all civil rights cases to the extent of going even beyond the legal process in achieving a successful result. Solely this, the Petition states, was the basis for the disqualification effort on the ground of bias and prejudice. Notwithstanding this specificity, the brief in opposition to the Petition alleges that the Petition is predicated on three factors: 1. that the respondent is black; 2. that he addressed a meeting of the Association for the Study of Afro-American Life and History; and 3. that the contents of the address revealed an "attachment" to the black civil rights movement. The plaintiffs thus utterly failed to meet the challenge of the Petition.

First of all, the motion for disqualification does not even allege that the Trial Judge is black, nor does it use any expression which directly or inferentially indicates that the Trial Judge is black, or that this was a factor in the disqualification effort. Second, there is absolutely no criticism of the Trial Judge for his addressing the Association; this was not an issue in the case, and this contention could not be based on our Petition. Third, the statement that the contents of his address revealed an "attachment" to the black civil rights movement is again a complete misnomer. The motion for disqualification does not rely on the fact that there was merely an attachment between the Trial Judge and the black civil rights movement. On the contrary, it expressly relies on the fact that he was an active participant, to the point of prejudice and bias to the defendant who filed this Petition for Certiorari.* Accord-

* Another misleading expression in the plaintiffs' answer to the Petition is the footnote on page 8 in which they state, "It is interesting to note that the other defendants to this litigation, who had initially joined with Local 542 in its recusal petition, have now declined to press on with this continued attempt to remove Judge Higginbotham from the case." This is likewise absolutely untrue. Counsel for the other defendants has not declined to file a Petition, but is relying on the Petition which we have filed.

ingly, it is clear that the real basis for the Petition remains unchallenged on the law and on the statements of fact.

It may be noted also that the answer to the Petition follows the opinion of the Trial Judge, which, as we have pointed out, is completely irrelevant to the issues raised in the motion for disqualification.

Every lawyer is bound to express his proper comments regarding a judge or the activities of any judge. If he fails to do so, he is guilty of prejudicial neglect. We have abided by that principle to the fullest extent. It is our opinion that the expressions made by the judge gave a serious basis for the defendant's fear of bias and prejudice at the trial, as discussed many times by this Court. It is the obligation of counsel to raise this basis for disqualification when and where it appears.

The matter is properly and legally before this Court.

It is respectfully submitted that the Petition for Certiorari should be granted.

Respectfully submitted,

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